

# Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	<b>Buyer</b>	[Department for Business, Energy and Industrial Strategy] (the Buyer). Its offices are on: [ 1 Victoria Street, London, SW1H 0ET]
2.	<b>Supplier</b>	Name: Mott MacDonald Limited Address: 8-10 Sydenham House, Croydon, CR0 2EE Registration number: 1110949
3.	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables. This opportunity is advertised in the Contract Notice in Find A Tender, reference prj_67 (FTS Contract Notice).
4.	<b>Contract reference</b>	prj_67
5.	<b>Contract Budget</b>	Up to £3million, Time and Materials based contract
6.	<b>Deliverables</b>	See Schedule 2 (Specification) for further details.
7.	<b>Buyer Cause</b>	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.
8.	<b>Collaborative working principles</b>	The Collaborative Working Principles apply to this Contract. See Clause 3.1.3 for further details.
9.	<b>Start Date</b>	1st December 2022
10.	<b>Expiry Date</b>	31st March 2025


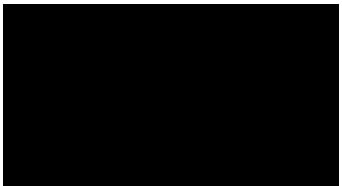
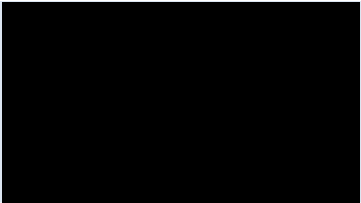


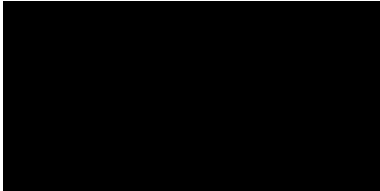
11.	<b>Extension Period</b>	[Extension exercised where the Buyer gives the Supplier no less than [3 Months'] written notice before the Contract expires]
12.	<b>Ending the Contract without a reason</b>	<p>The Buyer shall be able to terminate the Contract in accordance with Clause 14.3.</p> <p>[Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be [6 months].]</p>
13.	<b>Incorporated Terms (together these documents form the "the Contract")</b>	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <p>This Award Form</p> <p>Any Special Terms (see Section <b>Error! Reference source not found.</b> (Special Terms) in this Award Form)</p> <p>Core Terms</p> <p>Schedule 36 (Intellectual Property Rights)</p> <p>Schedule 1 (Definitions)</p> <p>Schedule 6 (Transparency Reports)</p> <p>Schedule 20 (Processing Data)</p> <p>The following Schedules (in equal order of precedence):</p> <p>Schedule 2 (Specification)</p> <p>Schedule 3 (Charges)</p> <p>Schedule 5 (Commercially Sensitive Information)</p> <p>Schedule 11 (Continuous Improvement)</p> <p>Schedule 13 (Contract Management)</p> <p>Schedule 17 (Service Recipients)</p> <p>Schedule 18 (Supply Chain Visibility)</p> <p>Schedule 21 (Variation Form)</p> <p>Schedule 22 (Insurance Requirements)</p>

		<p>Schedule 25 (Rectification Plan)</p> <p>Schedule 26 (Sustainability)</p> <p>Schedule 27 (Key Subcontractors)</p> <p>Schedule 29 (Key Supplier Staff)</p> <p>Schedule 30 (Exit Management)</p> <p>Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that aspect of the Tender will take precedence over the documents above.</p>
14.	<b>Sustainability</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
15.	<b>Buyer's Environmental Policy</b>	<p>Available online at:</p> <p><a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030915/beis-environmental-policy.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030915/beis-environmental-policy.pdf</a></p>
16.	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability)
17.	<b>Buyer's Security Policy</b>	<p>Available online at:</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
18.	<b>Commercially Sensitive Information</b>	Commercially Sensitive Information: Schedule 5 (Commercially Sensitive Information)]
19.	<b>Charges</b>	Details in Schedule 3 (Charges)
20.	<b>Reimbursable expenses</b>	None
21.	<b>Payment method</b>	Details found in Schedule 3 (Charges)

22.	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).
23.	<b>Liability</b>	<p>[In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than [the greater of £[5 million] or [150]% of the Estimated Yearly Charges]</p> <p>In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being [£10 million]</p>
24.	<b>Progress Meetings and Progress Reports</b>	<p>The Supplier shall attend Progress Meetings with the Buyer as detailed in the Invitation to Tender</p> <p>The Supplier shall provide the Buyer with Progress Reports as detailed in the Invitation to Tender</p>
25.	<b>Supplier Contract Manager</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
26.	<b>Supplier Authorised Representative</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
27.	<b>Supplier Compliance Officer</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
28.	<b>Supplier Data Protection Officer</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

29.	<b>Supplier Marketing Contact</b>	<div></div> <div></div> <div></div> <div></div>
30.	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 1:</b>  <u>Name:</u> <b><i>Ricardo-AEA Ltd</i></b>  <u>Registration number:</u> <b><i>00222915</i></b>  <u>Role of Subcontractor:</u>  - <i>Delivery support</i>  - <i>Cross-cutting support on inventory alignment</i></p> <p><b>Key Subcontractor 2</b>  <u>Name:</u> <b><i>UK Centre for Ecology &amp; Hydrology (UKCEH)</i></b>  <u>Registration number:</u> <b><i>11314957</i></b>  <u>Role of Subcontractor:</u>  - <i>Delivery support</i>  - <i>Cross-cutting support on inventory alignment</i></p> <p><b>Key Subcontractor 3</b>  <u>Name:</u> <b><i>Aether Limited</i></b>  <u>Registration number:</u> <b><i>06630896</i></b>  <u>Role of Subcontractor:</u>  - <i>Delivery support</i>  - <i>Cross cutting support on inventory alignment</i></p> <p><b>Key Subcontractor 4</b>  <u>Name:</u> <b><i>The National Physical Laboratory</i></b>  <u>Registration number:</u> <b><i>02937881</i></b></p>

		<u>Role of Subcontractor:</u> <i>-Cross cutting quality assurance and measurement, where applicable</i>
31.	<b>Buyer Authorised Representative</b>	

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	

Core Terms – Mid-tier  
Crown Copyright 2022  
Version: v1.1  
[Subject to Contract]

Date:		Date:	
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# Core Terms – Mid-tier



Core Terms – Mid-tier  
Crown Copyright 2022  
Version: v1.1  
[Subject to Contract]

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# 1. Definitions used in the contract

- 1.1 Interpret this Contract using Schedule 1 (Definitions).

# 2. How the contract works

- 2.1 **If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:**
- 2.1.1 make changes to the Award Form;
  - 2.1.2 create new Schedules;
  - 2.1.3 exclude optional template Schedules; and
  - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 **The Contract:**
- 2.2.1 is between the Supplier and the Buyer; and
  - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 **The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.**
- 2.4 **The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:**
- 2.4.1 the Buyer's requirements for the Deliverables;
  - 2.4.2 the Buyer's operating processes and working methods; and
  - 2.4.3 the ownership and fitness for purpose of the Buyer Assets,
- and it has advised the Buyer in writing of:**
- 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;

- 2.4.5 the actions needed to remedy each such unsuitable aspect;  
and
- 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,
- 2.4.7 and such actions, timetable and costs are fully reflected in this Contract.
- 2.5 **The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:**
  - 2.5.1 verify the accuracy of the Due Diligence Information; and
  - 2.5.2 properly perform its own adequate checks.
- 2.6 **The Buyer will not be liable for errors, omissions or misrepresentation of any information.**
- 2.7 **The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.**

### 3. What needs to be delivered

- 3.1 **All deliverables**
  - 3.1.1 The Supplier must provide Deliverables:
    - a) that comply with the Specification, the Tender Response and the Contract;
    - b) using reasonable skill and care;
    - c) using Good Industry Practice;
    - d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
    - e) on the dates agreed; and
    - f) that comply with Law.
- 3.2 **The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.**

**3.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:**

- 3.3.1 proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- 3.3.2 being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- 3.3.3 where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- 3.3.4 providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- 3.3.5 identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

**3.4 Goods clauses**

- 3.4.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.4.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- 3.4.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.4.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.4.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

- 3.4.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.4.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.4.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.4.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.4.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.4.11 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 uses all reasonable endeavours to minimise these costs.
- 3.4.12 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 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.5 Services clauses**

- 3.5.1 Late Delivery of the Services will be a Default of the Contract.
- 3.5.2 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 of the Buyer or third party suppliers.
- 3.5.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.5.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 3.5.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.5.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.5.7 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.

**3.6 Pricing and payments**

3.6.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.

**3.7 All Charges:**

3.7.1 exclude VAT, which is payable on provision of a valid VAT invoice; and

3.7.2 include all costs connected with the Supply of Deliverables.

**3.8 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.**

**3.9 A Supplier invoice is only valid if it:**

3.9.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and

3.9.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).

**3.10 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.**

**3.11 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.**

**3.12 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.**



## 4. The buyer's obligations to the supplier

- 4.1 **If Supplier Non-Performance arises from a Buyer Cause:**
  - 4.1.1 the Buyer cannot terminate the Contract under Clause 13.4.1;
  - 4.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
  - 4.1.3 the Supplier is entitled to additional time needed to make the Delivery;
  - 4.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 4.2 **Clause 4.1** **Error! Reference source not found. only applies if the Supplier:**
  - 4.2.1 gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;
  - 4.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
  - 4.2.3 mitigated the impact of the Buyer Cause.

## 5. Record keeping and reporting

- 5.1 **The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.**
- 5.2 **The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.**
- 5.3 **Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:**
  - 5.3.1 on or before the Start Date;
  - 5.3.2 at the end of each Contract Year; and

- 5.3.3 within 6 Months of the end of the Contract Period,  
**and the Supplier must meet with the Buyer if requested within 10 Working Days of the Buyer receiving a Financial Report.**
- 5.4 **If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:**
  - 5.4.1 Supplier's currently incurred or forecast future Costs; and
  - 5.4.2 forecast Charges for the remainder of the Contract,**then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.**
- 5.5 **The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:**
  - 5.5.1 complies with the Supplier's operating procedures; and
  - 5.5.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 5.6 **During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:**
  - 5.6.1 all information within the permitted scope of the Audit;
  - 5.6.2 any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and
  - 5.6.3 the Supplier Staff.
- 5.7 **The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.**
- 5.8 **The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:**
  - 5.8.1 correcting any identified Default;
  - 5.8.2 rectifying any error identified in a Financial Report; and
  - 5.8.3 repaying any Charges that the Buyer has overpaid.

- 5.9 **If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:**
  - 5.9.1 tell the Buyer and give reasons;
  - 5.9.2 propose corrective action; and
  - 5.9.3 provide a deadline for completing the corrective action.
- 5.10 **Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.**

## **6. Supplier staff**

- 6.1 **The Supplier Staff involved in the performance of the Contract must:**
  - 6.1.1 be appropriately trained and qualified;
  - 6.1.2 be vetted using Good Industry Practice and the Security Policy; and
  - 6.1.3 comply with all conduct requirements when on the Buyer's Premises.
- 6.2 **Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.**
- 6.3 **If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clauses 30.1 to 30.4.**
- 6.4 **The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.**
- 6.5 **The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission**

## 7. Supply chain

### 7.1 Appointing Subcontractors

7.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

- a) manage Subcontractors in accordance with Good Industry Practice;
- b) comply with its obligations under this Contract; and
- c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

### 7.2 Mandatory provisions in Sub-Contracts

7.2.1 The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Effective Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

7.2.2 The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Effective Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;

- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

### 7.3 **When Sub-Contracts can be ended**

7.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 13.4;
- c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

### 7.4 **Competitive terms**

7.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

7.4.2 If the Buyer uses Clause 7.4.1 **Error! Reference source not found.** then the Charges must be reduced by an agreed amount by using the Variation Procedure.

### 7.5 **Ongoing responsibility of the Supplier**

7.5.1 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.

## 8. Rights and protection

### 8.1 The Supplier warrants and represents that:

- 8.1.1 it has full capacity and authority to enter into and to perform the Contract;
- 8.1.2 the Contract is executed by its authorised representative;
- 8.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
- 8.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;
- 8.1.5 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 for the Buyer to receive the Deliverables;
- 8.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
- 8.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and
- 8.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Start Date or been subject to an investigation relating to a Prohibited Act.

### 8.2 The warranties and representations in Clauses 2.7 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

### 8.3 The Supplier indemnifies the Buyer against each of the following:

- 8.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
- 8.3.2 non-payment by the Supplier of any tax or National Insurance.

### 8.4 All claims indemnified under this Contract must use Clause 29.

- 8.5 **The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.**
- 8.6 **If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.**
- 8.7 **All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.**

## **9. Intellectual Property Rights (IPRs)**

- 9.1 **The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.**
- 9.2 **If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.**
- 9.3 **If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:**
  - 9.3.1 **obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or**
  - 9.3.2 **replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.**
- 9.4 **If the Buyer requires that the Supplier procures a licence in accordance with Schedule 36 or to modify or replace an item pursuant to Schedule 36, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect.**

## **10. Rectifying issues**

- 10.1 **If there is a Notifiable Default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Notifiable Default and 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.**

- 10.2 **When the Buyer receives a requested Rectification Plan it can either:**
  - 10.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 10.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 10.3 **Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:**
  - 10.3.1 will give reasonable grounds for its decision; and
  - 10.3.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

## 11. Escalating issues

- 11.1 **If the Supplier fails to:**
  - 11.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 10.1 or 10.3; and
  - 11.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

**or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.**
- 11.2 **The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.**
- 11.3 **If the Supplier is in Default of any of its obligations under this Clause 11, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clause 14.5.1 shall apply as if the contract were terminated under Clause 13.4.1.**



## 12. Step-in rights

- 12.1 **If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 12.1 and setting out:**
  - 12.1.1 whether it will be taking action itself or with the assistance of a third party;
  - 12.1.2 what Required Action the Buyer will take during the Step-In Process;
  - 12.1.3 when the Required Action will begin and how long it will continue for;
  - 12.1.4 whether the Buyer will require access to the Sites; and
  - 12.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 12.2 **For as long as the Required Action is taking place:**
  - 12.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
  - 12.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
  - 12.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 12.3 **The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.**
- 12.4 **If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.**
- 12.5 **The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause<sup>13</sup>, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:**

- 12.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
- 12.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

## **13. Ending the contract**

- 13.1 **The Contract takes effect on the Start Date and ends on the End Date or earlier if terminated under this Clause 13 or if required by Law.**
- 13.2 **The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.**
- 13.3 **Ending the contract without a reason**
  - 13.3.1 The Buyer has the right to terminate the Contract at any time without reason or (unless the Award Form states something different) liability by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clauses 13.5.1b) to 13.5.1h) applies.
- 13.4 **When the Buyer can end the Contract**
  - 13.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:
    - a) there's a Supplier Insolvency Event;
    - b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance
    - c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
    - d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request;
    - e) there's any material Default of the Contract;
    - f) a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer

serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;

- g) there's any material Default of any Joint Controller Agreement relating to the Contract;
- h) there's a Default of Clauses 2.7, 9, 11, 17, 18, 30, 35, Schedule 19 (Cyber Essentials) (where applicable) or Schedule 36 (Intellectual Property Rights) relating to the Contract;
- i) the performance of the Supplier causes a Critical Service Level Failure to occur;
- j) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- k) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- l) 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;
- m) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
- n) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.

13.4.2 The Buyer also has the right to terminate the Contract in accordance with Clauses 8.5 and 23.3, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) and Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable).

13.4.3 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 13.5.1b) to 13.5.1h) applies.

### **13.5 What happens if the contract ends?**

13.5.1 Where the Buyer terminates the Contract under Clauses 13.4.1 and 8.5, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) or Paragraph 7 of Schedule 24

(Financial Difficulties) (where applicable). 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 Contract Period.
- 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 terminated Contract.
- f) The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- g) 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.
- h) The following Clauses survive the termination of the Contract: 3.4.10, 5, 6.2, 9, 14, 17, 18, 19, 20, 21, 38, 39, Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

**13.6 If either Party terminates the Contract under Clause 23.3:**

- a) each party must cover its own Losses; and
- b) Clauses 13.5.1b) to 13.5.1h) applies.

**13.7 When the Supplier can end the contract**

13.7.1 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 within 30 days of the date of the Reminder Notice.

13.7.2 The Supplier also has the right to terminate the Contract in accordance with Clauses 23.3 and 26.5.

13.7.3 Where the Buyer terminates the Contract under Clause 14.3 or the Supplier terminates the Contract under Clause 13.7.1 or 26.5:

- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- b) 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
- c) Clauses 13.5.1d) to 13.5.1h) apply.

**13.8 Partially ending and suspending the contract**

13.8.1 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.

13.8.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of the Contract can still be used to effectively deliver the intended purpose.

13.8.3 The Parties must agree any necessary Variation required by this Clause 13.8 using the Variation Procedure, but the Supplier may not either:

- a) reject the Variation; or
- b) increase the Charges, except where the right to partial termination is under Clause 13.3.

13.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 13.8.

## **14. How much you can be held responsible for?**

**14.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more**

**than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.**

**14.2 Neither Party is liable to the other for:**

14.2.1 any indirect Losses; and

14.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

**14.3 In spite of Clause 14.1, neither Party limits or excludes any of the following:**

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

14.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and

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

**14.4 In spite of Clause 14.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses Error! Reference source not found., 8.3, Error! Reference source not found., 15.3 or Schedule 7 (Staff Transfer) of the Contract.**

**14.5 In spite of Clause 14.1, but subject to Clauses 14.2 and 14.3, the Supplier's total aggregate liability in each Contract Year under Clause 17.8.5 is no more than the Data Protection Liability Cap.**

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

**14.7 When calculating the Supplier's liability under Clause 14.1 the following items will not be taken into consideration:**

14.7.1 Deductions; and

14.7.2 any items specified in Clause 14.4.

**14.8 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.**

## 15. Obeying the law

- 15.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 15.2 The Supplier shall comply with the provisions of:
  - 15.2.1 the Official Secrets Acts 1911 to 1989; and
  - 15.2.2 section 182 of the Finance Act 1989.
- 15.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.
- 15.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 15.1 and Clauses 30 to 35.

## 16. Insurance

- 16.1 The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

## 17. Data protection

- 17.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 17.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 17.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 17.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 17.5 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.**

**17.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:**

17.6.1 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

17.6.2 restore the Government Data itself or using a third party.

**17.7 The Supplier must pay each Party's reasonable costs of complying with Clause 17.6 unless the Buyer is entirely at fault.**

**17.8 The Supplier:**

17.8.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;

17.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

17.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;

17.8.4 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; and

17.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 17 or any Data Protection Legislation.

## **18. What you must keep confidential**

**18.1 Each Party must:**

18.1.1 keep all Confidential Information it receives confidential and secure;

18.1.2 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



18.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

**18.2 In spite of Clause 18.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:**

18.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

18.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;

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

18.2.4 if the information was in the public domain at the time of the disclosure;

18.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;

18.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;

18.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and

18.2.8 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.

**18.3 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.**

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

- 18.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
- 18.4.2 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;
- 18.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- 18.4.4 where requested by Parliament; and
- 18.4.5 under Clauses 3.11 and 19.
- 18.5 **For the purposes of Clauses 18.2 to 18.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 18.**
- 18.6 **Transparency Information and any Information which is exempt from disclosure by Clause 19 is not Confidential Information.**
- 18.7 **The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.**

## 19. When you can share information

- 19.1 **The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.**
- 19.2 **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:**
  - 19.2.1 publish the Transparency Information;
  - 19.2.2 comply with any Freedom of Information Act (FOIA) request; and
  - 19.2.3 comply with any Environmental Information Regulations (EIR) request.

- 19.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 19.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## **20. Invalid parts of the contract**

- 20.1 If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.
- 20.2 If any removal under Clause 20.1 is so fundamental that it prevents the purpose of the Contract from being achieved or it materially changes the balance of risk and rewards between the Parties, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to rectify these issues and to amend the Contract accordingly so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that it is reasonably possible, achieves the Parties' original commercial intention.
- 20.3 If the Parties cannot agree on what amendments are required within 5 Working Days, the matter will be dealt with via commercial negotiation as set out in Clause Error! Reference source not found. and, if there is no resolution within 30 Working Days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.

## **21. No other terms apply**

- 21.1 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.

## **22. Other people's rights in the Contract**

- 22.1 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.**

## **23. Circumstances beyond your control**

- 23.1 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:**
- 23.1.1 provides a Force Majeure Notice to the other Party; and**
  - 23.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.**
- 23.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Sub-contractor or supplier 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.**
- 23.3 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.**

## **24. Relationships created by the contract**

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

## **25. Giving up contract rights**

- 25.1 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.**

## 26. Transferring responsibilities

- 26.1 **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.**
- 26.2 **Subject to Schedule 27 (Key Subcontractors), 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 information about the Subcontractor as it reasonably requests. 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:**
  - 26.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 26.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 26.2.3 the proposed Subcontractor employs unfit persons
- 26.3 **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.**
- 26.4 **When the Buyer uses its rights under Clause 26.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.**
- 26.5 **The Supplier can terminate the Contract novated under Clause 26.3 to a private sector body that is experiencing an Insolvency Event.**
- 26.6 **The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.**
- 26.7 **If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:**

- 26.7.1 their name;
- 26.7.2 the scope of their appointment;
- 26.7.3 the duration of their appointment; and
- 26.7.4 a copy of the Sub-Contract.

## **27. Changing the contract**

- 27.1 **Either Party can request a Variation to the Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.**
- 27.2 **The Supplier must provide an Impact Assessment either:**
  - 27.2.1 with the Variation Form, where the Supplier requests the Variation; and
  - 27.2.2 within the time limits included in a Variation Form requested by the Buyer.
- 27.3 **If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:**
  - 27.3.1 agree that the Contract continues without the Variation; and
  - 27.3.2 refer the Dispute to be resolved using Clause 38 (Resolving Disputes).
- 27.4 **The Buyer is not required to accept a Variation request made by the Supplier.**
- 27.5 **The Supplier may only reject a Variation requested by the Buyer if the Supplier:**
  - 27.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
  - 27.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.

- 27.6 If there is a **General Change in Law**, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the **Charges**.
- 27.7 If there is a **Specific Change in Law** or one is likely to happen during the **Contract Period** the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any **Variation** is needed either to the **Deliverables**, the **Charges** or the **Contract** and provide evidence:
  - 27.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - 27.7.2 of how it has affected the Supplier's costs.
- 27.8 Any change in the **Charges** or relief from the Supplier's obligations because of a **Specific Change in Law** must be implemented using **Clauses 27.1 to 27.4**.

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

- 28.1 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.
- 28.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the **Award Form**.
- 28.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **29. Dealing with claims**

- 29.1 If a **Beneficiary** is notified of a **Claim** then it must notify the **Indemnifier** as soon as reasonably practical and no later than 10 **Working Days**.
- 29.2 At the **Indemnifier's** cost the **Beneficiary** must both:

- 29.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- 29.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 29.3 **The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.**
- 29.4 **The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.**
- 29.5 **The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.**
- 29.6 **Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.**
- 29.7 **If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:**
  - 29.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
  - 29.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

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

- 30.1 **The Supplier must not during the Contract Period:**
  - 30.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
  - 30.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 30.2 **The Supplier must during the Contract Period:**



- 30.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
  - 30.2.2 keep full records to show it has complied with its obligations under this Clause 30 and give copies to the Buyer on request; and
  - 30.2.3 if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 30, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 30.3 **The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 30.1 or has any reason to think that it, or any of the Supplier Staff, have either:**
- 30.3.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 30.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 30.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Contract; and
  - 30.3.4 suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.
- 30.4 **If the Supplier notifies the Buyer as required by Clause 30.3, 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.**
- 30.5 **If the Supplier is in Default under Clause 30.1 the Buyer may:**
- 30.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
  - 30.5.2 immediately terminate this agreement.

**30.6 In any notice the Supplier gives under Clause 30.4 it must specify the:**

30.6.1 Prohibited Act;

30.6.2 identity of the Party who it thinks has committed the Prohibited Act; and

30.6.3 action it has decided to take.

## **31. Equality, diversity and human rights**

**31.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:**

31.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

31.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

**31.2 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.**

## **32. Health and safety**

**32.1 The Supplier must perform its obligations meeting the requirements of:**

32.1.1 all applicable Law regarding health and safety; and

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

**32.2 The Supplier 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.**

## 33. Environment

- 33.1 **When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.**
- 33.2 **The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.**

## 34. Tax

- 34.1 **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.**
- 34.2 **Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:**
  - 34.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - 34.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 34.3 **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:**
  - 34.3.1 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
  - 34.3.2 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 Contract Period in connection with the

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

**34.4 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:**

34.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 34.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

34.4.2 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;

34.4.3 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 34.3.1 or confirms that the Worker is not complying with those requirements; and

34.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **35. Conflict of interest**

**35.1 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.**

**35.2 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.**

**35.3 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 its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.**

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

- 36.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:**
  - 36.1.1 Law;**
  - 36.1.2 Clause 15.1; and**
  - 36.1.3 Clauses 30 to 35.**
- 36.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 36.1 to the Buyer or a Prescribed Person.**

## **37. Further Assurances**

- 37.1 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.**

## **38. Resolving disputes**

- 38.1 If there is a Dispute, the senior representatives of the Parties 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.**
- 38.2 If the Parties cannot resolve the Dispute via commercial negotiation, they 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 38.3 to 38.5.**
- 38.3 Unless the Buyer refers the Dispute to arbitration using Clause 38.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:**
  - 38.3.1 determine the Dispute;**

38.3.2 grant interim remedies; and

38.3.3 grant any other provisional or protective relief.

**38.4 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.**

**38.5 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 38.3, 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 38.4.**

**38.6 The Supplier cannot suspend the performance of the Contract during any Dispute.**

## **39. Which law applies**

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

# Schedule 1 (Definitions)

## 1. DEFINITIONS

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
  - 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

- 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
- 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.3.13 Any reference in this Contract 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):
- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

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

<b>"Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>"Additional FDE Group Member"</b>	means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);



<b>"Affected Party"</b>	the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Allowable Assumptions"</b>	means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Associates"</b>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
<b>"Audit"</b>	the Buyer's right to: <ul style="list-style-type: none"> <li>(a) verify the integrity and content of any Financial Report;</li> <li>(b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(c) verify the costs of the Supplier (including the costs of all Sub-contractors and any third party suppliers) in connection with the provision of the Services;</li> <li>(d) verify the Open Book Data;</li> <li>(e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>(f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of se-</li> </ul>

	<p>curity and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</p> <p>(g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</p> <p>(h) 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;</p> <p>(i) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</p> <p>(j) 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;</p> <p>(k) 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;</p>
<b>"Auditor"</b>	<p>(a) the Buyer's internal and external auditors;</p> <p>(b) the Buyer's statutory or regulatory auditors;</p> <p>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>(f) successors or assigns of any of the above;</p>
<b>"Award Form"</b>	<p>the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;</p>

<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	has the meaning given to it in the Award Form;
<b>"Buyer Data"</b>	<p>means 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 Buyer's or End User's Confidential Information, and which:</p> <ul style="list-style-type: none"> <li>(a) are supplied to the Supplier by or on behalf of the Buyer, or End User; or</li> <li>(b) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> <li>(c) any Personal Data for which the Buyer or End User is the Controller;</li> </ul>
<b>"Buyer Existing IPR"</b>	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);

<b>"Buyer Third Party"</b>	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
<b>"Buyer's Confidential Information"</b>	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and</p> <p>information derived from any of the above;</p>
<b>"Central Government Body"</b>	<p>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> <p>(a) Government Department;</p> <p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;

<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<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 consists of the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the term of the Contract from the earlier of the: (a) Start Date; or (b) the Effective Date (c) until the End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;

<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>"Control"</b>	control 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;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Core Terms"</b>	the Buyer's terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms";
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <p>(a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <ul style="list-style-type: none"> <li>(i) base salary paid to the Supplier Staff;</li> <li>(ii) employer's National Insurance contributions;</li> <li>(iii) pension contributions;</li> <li>(iv) car allowances;</li> <li>(v) any other contractual employment benefits;</li> <li>(vi) staff training;</li> <li>(vii) work place accommodation;</li> <li>(viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li> <li>(ix) reasonable recruitment costs, as agreed with the Buyer;</li> </ul> <p>(b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier</p>

	<p>Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>(c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>(d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>(e) Overhead;</p> <p>(f) financing or similar costs;</p> <p>(g) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>(h) taxation;</p> <p>(i) fines and penalties;</p> <p>(j) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>(k) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Award Form;
<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

<b>"Crown IPR"</b>	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<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>	(i) the UK GDPR, (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; and (iv) (to the extent that it applies) the EU GDPR;
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award 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"</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>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;



<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Dependent Parent Undertaking"</b>	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some

	other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <ul style="list-style-type: none"> <li>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>(b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>(c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"DPA 2018"</b>	The Data Protection Act 2018
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;

<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>"End Date"</b>	the earlier of: (a) the Expiry Date as extended by the Buyer under Clause 14.2; or (b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
<b>"End User"</b>	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under Clause 15.1: (a) in the first Contract Year, the Estimated Year 1 Charges; or (b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or

	(c) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"EU"	European Union
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
"Expiry Date"	the date of the end of the Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> </ul>

	<ul style="list-style-type: none"> <li>(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;</li> <li>(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> <li>(g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> <li>(h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;</li> <li>(i) any of the following:           <ul style="list-style-type: none"> <li>(i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;</li> <li>(ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;</li> <li>(iii) non-payment by any FDE Group entity of any financial indebtedness;</li> <li>(iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;</li> </ul> </li> </ul>
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	<p>(v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or</p> <p>(vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or</p> <p>(j) any [one] of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold.</p>
<b>"Financial Report"</b>	<p>a report provided by the Supplier to the Buyer that:</p> <p>(a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</p> <p>(b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</p> <p>(c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of this Contract; and</p> <p>(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;</p>
<b>"Financial Transparency Objectives"</b>	<p>means:</p> <p>(a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;</p>

	<ul style="list-style-type: none"> <li>(b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;</li> <li>(c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</li> <li>(d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;</li> <li>(e) the Parties challenging each other with ideas for efficiency and improvements; and</li> <li>(f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;</li> </ul>
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time 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 Affected Party which prevent or materially delay the Affected Party from performing its obligations under a 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 but excluding:               <ul style="list-style-type: none"> <li>(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 Sub-contractor's supply chain;</li> </ul> </li> </ul>

	<p>(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>(iii) any failure of delay caused by a lack of funds,</p> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"General Anti-Abuse Rule"</b>	<p>(a) the legislation in Part 5 of the Finance Act 2013 and; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>
<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Goods"</b>	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
<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>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;



<b>"Government Data"</b>	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:  (a) are supplied to the Supplier by or on behalf of the Buyer; or (b) the Supplier is required to generate, process, store or transmit pursuant to the Contract;
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	an assessment of the impact of a Variation request by the Buyer completed in good faith, including:  (a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract; (b) details of the cost of implementing the proposed Variation; (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

	<p>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</p> <p>(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</p>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Incorporated Terms"</b>	the contractual terms applicable to the Contract specified in the Award Form;
<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>	the adjustment of an amount or sum in accordance with the Award Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<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>"Initial Period"</b>	the initial term of the Contract specified in the Award Form;
<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p>

	<p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, an LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or</p>
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	<p>given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(a) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract;
<b>"Intellectual Property Rights" or "IPR"</b>	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"Invoicing Address"</b>	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
<b>"IP Completion Day"</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;

<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
<b>"Joint Control"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	any Subcontractor: <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>(c) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10%</li> </ul>

	<p>of the aggregate Charges forecast to be payable under the Contract,</p> <p>and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Start Date;
<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>"Law Enforcement Processing"</b>	processing under Part 3 of the DPA 2018;
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Marketing Contact"</b>	shall be the person identified in the Award Form;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;

<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"</b>	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly;</p>
<b>"New IPR Item"</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>"Notifiable Default"</b>	<p>means:</p> <p>(a) the Supplier commits a material Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>
<b>"Occasion of Tax Non –Compliance"</b>	<p>where:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax</p>

	related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;
<b>"Open Book Data"</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>(b) operating expenditure relating to the provision of the Deliverables including an analysis showing:               <ul style="list-style-type: none"> <li>(i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>(ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>(iv) Reimbursable Expenses, if allowed under the Award Form;</li> </ul> </li> <li>(c) Overheads;</li> <li>(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</li> <li>(e) the Supplier Profit achieved over the Contract Period and on an annual basis;</li> <li>(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</li> <li>(g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</li> <li>(h) the actual Costs profile for each Service Period;</li> </ul>



<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> 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> ;
<b>"Open Licence Publication Material"</b>	means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Personal Data Breach"</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-">https://www.gov.uk/government/publications/blowing-the-</a>

	<a href="#"><u>whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies;</u></a>
<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<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>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Prohibited Acts"</b>	<p>(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:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(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 the Contract; or</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</li> </ul>

	(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>"Protective Measures"</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>(a) the nature of the data to be protected</li> <li>(b) harm that might result from Data Loss Event;</li> <li>(c) state of technological development</li> <li>(d) the cost of implementing any measures</li> </ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<b>"Public Sector Body"</b>	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none"> <li>(a) full details of the Notifiable Default that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Notifiable Default; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable</li> </ul>

	Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
<b>"Rectification Plan Process"</b>	the process set out in Clause 11;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</li> <li>(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li> </ul>
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any

	of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in

	respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>(a) the Deliverables are (or are to be) provided; or</li> <li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> <li>(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)</li> </ul>
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)
<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)

<b>"Social Value Report"</b>	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used
<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into the Contract;
<b>"Special IPR Terms"</b>	any additional terms and conditions relating to IPR set out in the Award Form incorporated into the Contract;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>"Specification"</b>	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
<b>"Standards"</b>	<p>any:</p> <ul style="list-style-type: none"> <li>(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>(b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>(c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;</li> <li>(d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Step-In Process"</b>	the process set out in Clause 13;

<b>"Step-In Trigger Event"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Service Level Failure;</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) where a right of termination is expressly reserved in this Contract;</li> <li>(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor required under the Award Form;</li> <li>(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;</li> <li>(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;</li> <li>(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;</li> <li>(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or</li> <li>(i) a need by the Buyer to take action to discharge a statutory duty;</li> </ul>
<b>"Step-Out Plan"</b>	<p>means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process;</p>
<b>"Storage Media"</b>	<p>the part of any device that is capable of storing and retrieving data;</p>
<b>"Sub-Contract"</b>	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> </ul>



	(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<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 Supplier related to the Contract;
<b>"Subsidiary Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Supplier Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36.
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to: (a) Achieve a Milestone by its Milestone Date;

	<p>(b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</p> <p>(c) comply with an obligation under the Contract;</p>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
<b>"Supplier's Confidential Information"</b>	<p>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract;</p> <p>Information derived from any of (a) and (b) above;</p>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);

<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
<b>"Test Plan"</b>	a plan: (a) for the Testing of the Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and <b>"Tested"</b> shall be construed accordingly;
<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>"Third Party IPR Licence"</b>	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36

<b>"Transparency Information"</b>	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for –  (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and  (b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
<b>"UK 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 (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019
<b>"Variation"</b>	means a variation to the Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 28 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);

<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<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 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

## Schedule 2 (Specification)

This Schedule sets out what the Buyer wants. This can be found in the separate PDF ITT document.

## Schedule 3 (Charges)

### HOW CHARGES ARE CALCULATED

- 1.1 The Charges:
  - 1.1.1 shall be calculated in accordance with the terms of this Schedule;
  - 1.1.2 [Cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and]
- 1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

### THE PRICING MECHANISMS

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

### ARE COSTS AND EXPENSES INCLUDED IN THE CHARGES

- 1.4 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:
  - 1.4.1 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
  - 1.4.2 costs incurred prior to the commencement of the Contract.

### WHEN THE SUPPLIER CAN ASK TO CHANGE THE CHARGES

- 1.5 The Charges will be fixed for the first [Insert: 2] years following the Start Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 1.6 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.
- 1.7 Any notice requesting an increase shall include:
  - 1.7.1 a list of the Charges to be reviewed;
  - 1.7.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
    - a) [a breakdown of the profit and cost components that comprise the relevant part of the Charges; ]

- b) [details of the movement in the different identified cost components of the relevant Charge;]
  - c) [reasons for the movement in the different identified cost components of the relevant Charge;]
  - d) [evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and]
  - e) [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 Start Date.]
- 1.7.3 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 1.7.4 [Any Approval granted by the Buyer pursuant to Paragraph The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion. shall be on the condition that the change to the Charges will not result in the Supplier Profit Margin exceeding the Maximum Permitted Profit Margin.]
- 1.7.5 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 1 shall be updated accordingly.

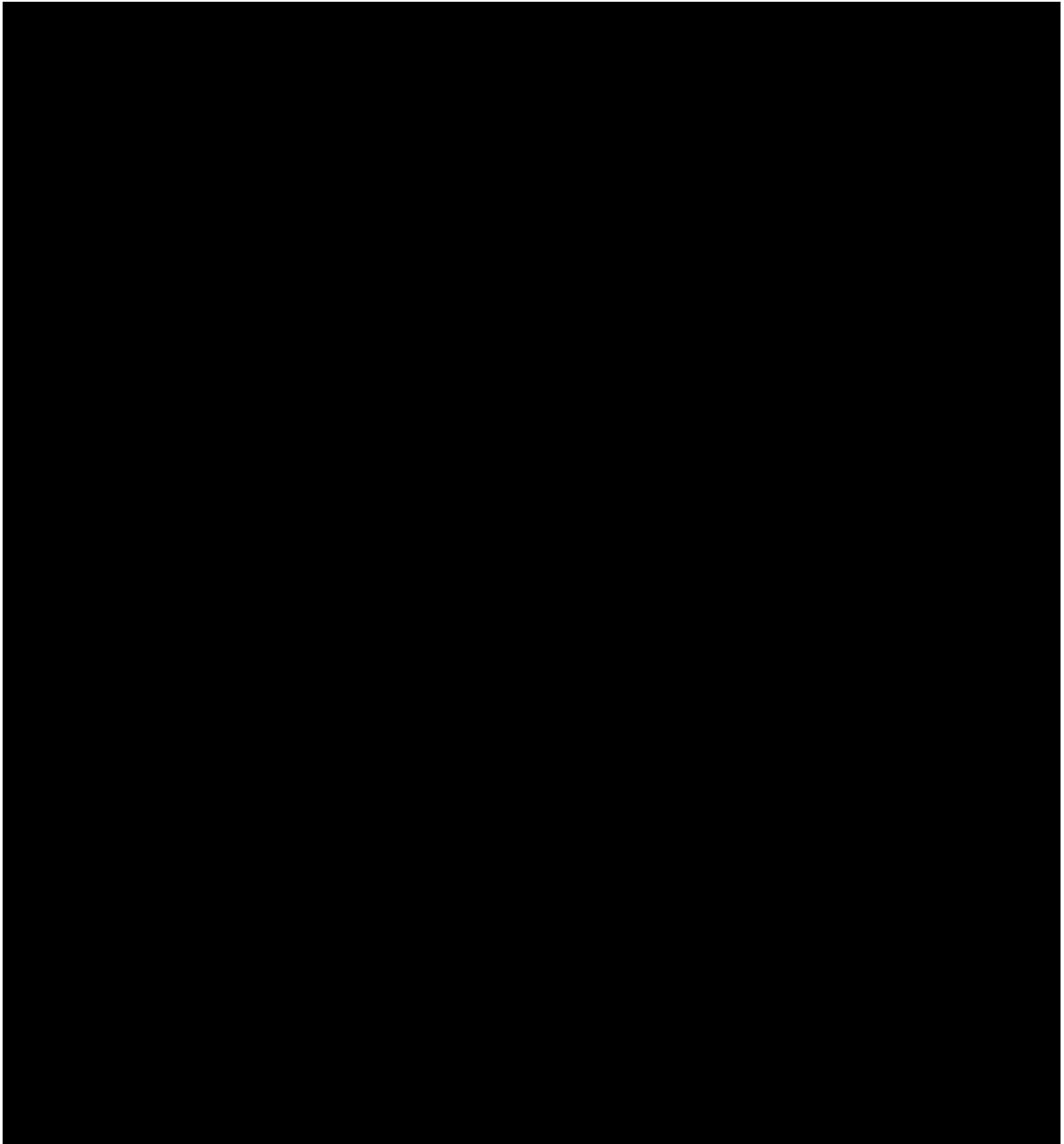


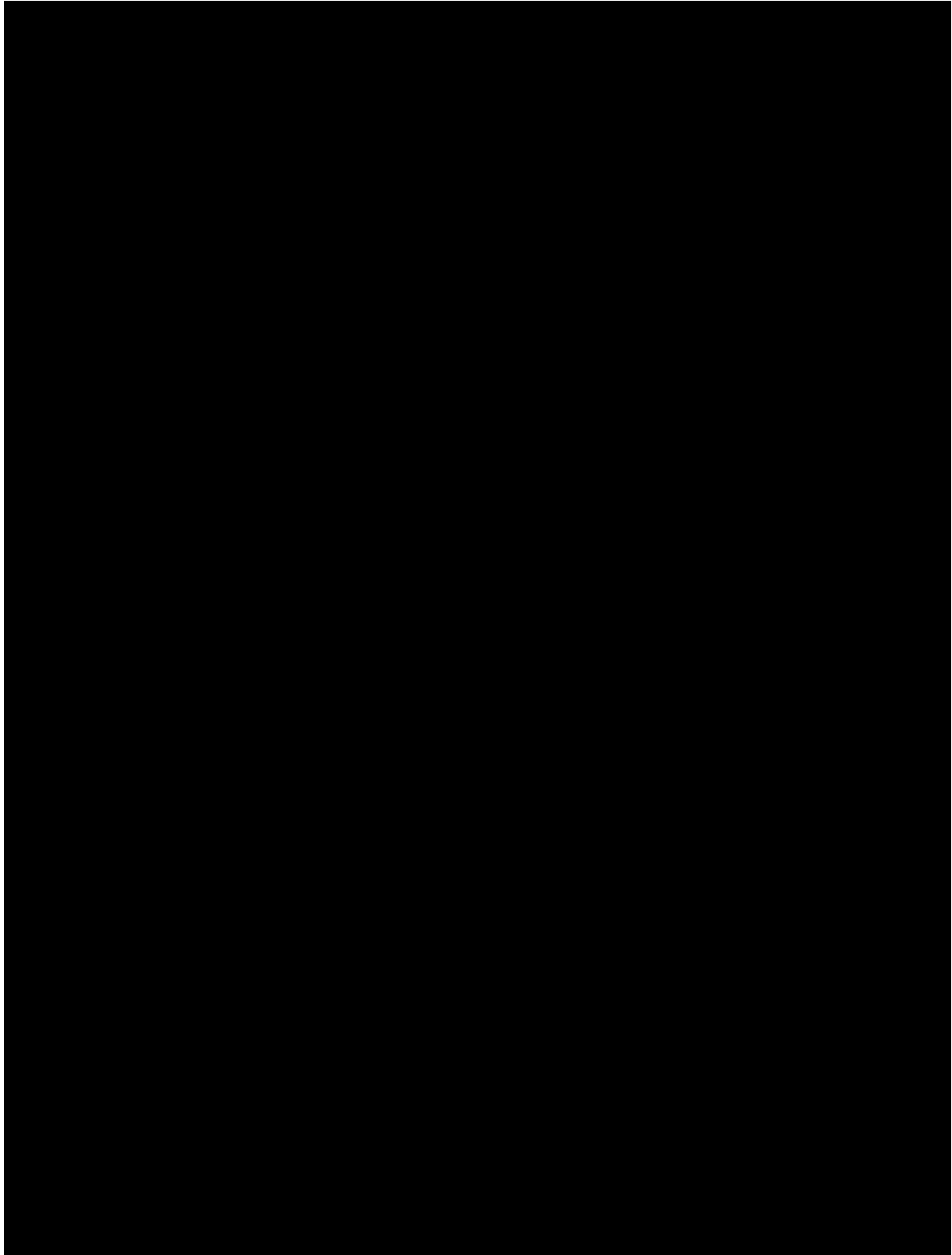
## Schedule 3, Annex 1: Rates and Prices

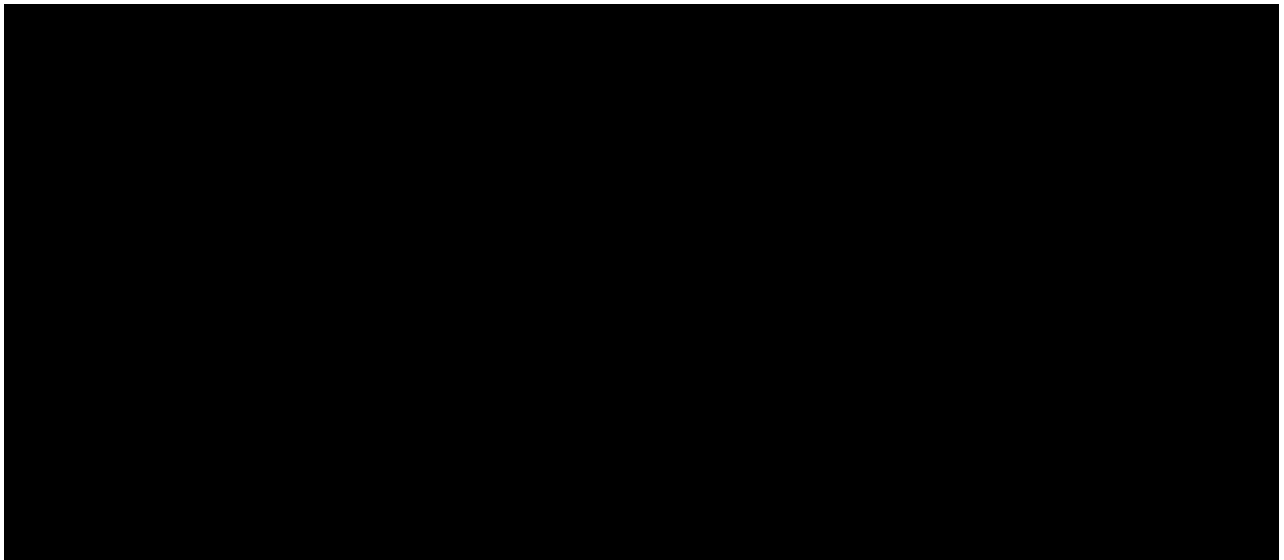
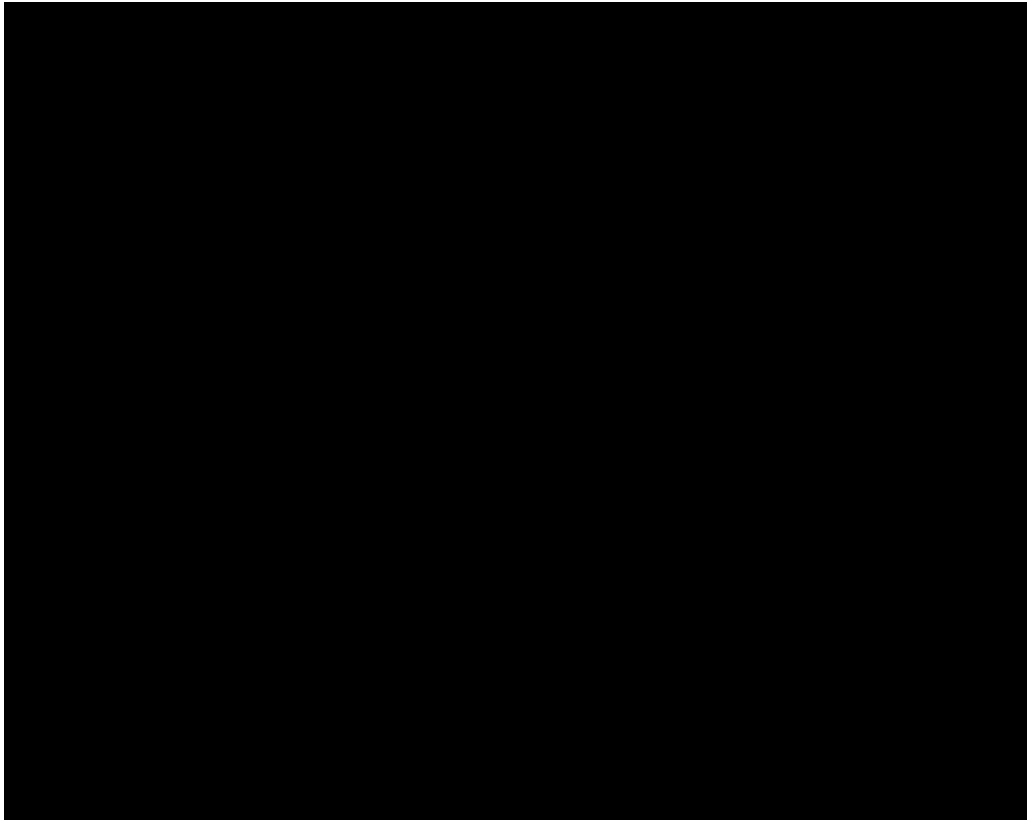
### Table 1: Time and Materials

The Supplier (and its Subcontractor) shall not be entitled to include any uplift for risks or contingencies within its day rates

*The rates below shall not be subject to variation by way of Indexation*







## Schedule 5 (Commercially Sensitive Information)

### WHAT IS THE COMMERCIALLY SENSITIVE INFORMATION?

- 1.8 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.9 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.10 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality

## Schedule 6 (Transparency Reports)

- 1.11 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.12 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.13 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.14 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## Schedule 6, Annex A: List of Transparency Reports

Title	Content	Format	Frequency
[Performance - KPIs]	KPI performance tracking for 'silver' contract	Publication on .gov.uk	Quarterly
[Charges]	Contract Award Notice with anticipated spend	.gov.uk	Upon award
[Key Subcontractors]	Subcontractors engaged in the contract delivery, including % of spend	Transparency reports and KPIs	Quarterly

## Schedule 11 (Continuous Improvement)

### SUPPLIER'S OBLIGATIONS

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.
- 1.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.

- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
  - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.



# Schedule 13 (Contract Management)

## 1. DEFINITIONS

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Operational Board"</b>	the board established in accordance with Paragraph 4.1 of this Schedule;
<b>"Project Manager"</b>	the manager appointed in accordance with Paragraph 2.1 of this Schedule;

## 2. PROJECT MANAGEMENT

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## 3. ROLE OF THE SUPPLIER PROJECT MANAGER

- 3.1 The Supplier Project Manager shall be:
  - 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position himself; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

#### **4. ROLE OF THE OPERATIONAL BOARD**

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

#### **5. CONTRACT RISK MANAGEMENT**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## **Schedule 13, Annex A: Operational Boards**

The Parties agree to operate the following boards at the locations and at the frequencies set out in the ITT governance section.

# Schedule 15 (Minimum Standards of Reliability)

## 1. STANDARDS

- 1.1 If this Contract has an anticipated contract value in excess of £20 million (excluding VAT) it shall not be awarded unless the Supplier can demonstrate that it meets the minimum standards of reliability as set out in the Find a Tender Service Notice ("**Minimum Standards of Reliability**") at the time of the proposed award of the Contract.
- 1.2 The Buyer shall assess the Supplier's compliance with the Minimum Standards of Reliability whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 1.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Paragraph 1.2, the Buyer shall so notify the Supplier and the Buyer reserves the right to terminate its Contract for material Default under Clause 14.4 (When the Buyer can end the contract).

## Schedule 18 (Supply Chain Visibility)

### 1. DEFINITIONS

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities;
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of this Schedule 18; and
<b>"Unconnected Sub-contract"</b>	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017
<b>"Unconnected Sub-contractor"</b>	any third party with whom the Supplier enters into an Unconnected Sub-contract

## **2. VISIBILITY OF SUB-CONTRACT OPPORTUNITIES IN THE SUPPLY CHAIN**

- 2.1 The Supplier shall:
  - 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
  - 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
  - 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
  - 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
  - 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 18 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligations on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Start Date.
- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

## **3. VISIBILITY OF SUPPLY CHAIN SPEND**

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
  - 3.1.1 the total contract revenue received directly on the Contract;
  - 3.1.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - 3.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1.1–3.1.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version.

The Buyer agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

#### **4 Visibility of Payment Practice**

- 4.1 If this Contract has at the Start Date an anticipated contract value in excess of £5 million per annum (excluding VAT) averaged over the Contract Period and without prejudice to Clause 4.6, Clause 8.2.1(b) and 8.2.2(b), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
  - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
  - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Supply Chain Information Report a summary of its compliance with this Paragraph 4.4, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

- 4.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide to the Buyer within [30] Working Days of submission of the latest Supply Chain Information Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- (b) actions to address each of the causes set out in Sub-Paragraph (a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

- 4.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

- 4.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 4.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).



## Schedule 18, Annex 1 - Supply Chain Information Report template

	Contract Year 20[ ]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Contract Year	£[ ]	100%	£[ ]	100%
Total value of Sub-contracted revenues (£) in this Contract Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to SMEs (£) in this Contract Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to VCSEs (£) in this Contract Year	£[ ]	[ ]	£[ ]	[ ]

## Schedule 20 (Processing Data)

### 1. Status of the Controller

- 1.1 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 a Contract dictates the status of each party under the DPA 2018. A Party may act as:
- 1.1.1 “Controller” in respect of the other Party who is “Processor”;
  - 1.1.2 “Processor” in respect of the other Party who is “Controller”;
  - 1.1.3 “Joint Controller” with the other Party;
  - 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,
- in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### 2. Where one Party is Controller and the other Party its Processor

- 2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- 2.4.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required

the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;

2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

2.4.3 ensure that:

- a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
- b) it uses all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
  - (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 publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- a) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
- b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller

which could include relevant parties entering into the International Data Transfer Agreement (the “**IDTA**”), or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the “**Ad-dendum**”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures determined by the Controller;

- c) the Data Subject has enforceable rights and effective legal remedies;
- d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

2.4.5 where the Personal Data is subject to EU GDPR, not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- a) the transfer is in accordance with Article 45 of the EU GDPR; or
- b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission’s decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
- c) the Data Subject has enforceable rights and effective legal remedies;
- d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

2.4.6 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.

- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;
  - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 2.5.6 becomes aware of a Personal Data Breach.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.

- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 the Controller determines the Processing 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
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 2.11.2 obtain the written consent of the Controller;
  - 2.11.3 enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
  - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **3. Where the Parties are Joint Controllers of Personal Data**

- 3.1 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 Annex 2 to this Schedule 20 (*Processing Data*).

## **Independent Controllers of Personal Data**

- 3.2 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 3.3 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 3.4 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 3.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 3.6 The Parties shall only provide Personal Data to each other:
  - 3.6.1 to the extent necessary to perform their respective obligations under the Contract;
  - 3.6.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - 3.6.3 where it has recorded it in Annex 1 (*Processing Personal Data*).
- 3.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 3.8 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 3.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**"Request Recipient"**):
  - 3.9.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

- 3.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
  - a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 3.10 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - 3.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 3.10.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 3.10.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 3.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 3.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
- 3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
- 3.13 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.



## Schedule 20, Annex 1 - Processing Personal Data

1. 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 Annex shall be with the Buyer at its absolute discretion.

- 1.1 The contact details of the Buyer's Data Protection Officer are:

BEIS Data Protection Officer  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

[dataprotection@beis.gov.uk](mailto:dataprotection@beis.gov.uk)

- 1.2 The contact details of the Supplier's Data Protection Officer are:

- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>The processing of names and business contact details of staff of both the Authority, the Inventory Agency and its partners, and the Contractor will be necessary to deliver the services exchanged during the course of the Contract, and to undertake contract and performance management.</p> <p>The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract</p>
Duration of the Processing	Processing will take place from the start of the contract for the duration of the Contract. The Contract will end on 31 March 2025.

Nature and purposes of the Processing	<p>The nature of the processing will include collection, recording, organisation, storage, retrieval, use, restriction, erasure, or destruction of data.</p> <p>Processing takes place for the purposes of maintaining contact with parties involved in the improvement programme.</p> <p>The nature of processing will include the storage and use of names and business contact details of staff of the Authority, the Inventory Agency and its partners, and the Contractor as necessary to deliver the services and to undertake contract and performance management. The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<p>Names, business telephone numbers and email addresses, office location and position of staff of the Authority, the inventory agency and its partners, and the Contractor as necessary to deliver the services and to undertake contract and performance management. The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p>
Categories of Data Subject	<p>Staff of the Authority, the inventory agency and its partners, and the Contractor, including where those employees are named within the Contract itself or involved within contract management.</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	<p>The Contractor will delete the Personal Data and erase the Personal Data from any computers, storage devices and storage media that are to be retained by the Contractor after the expiry of the Contract. The Contractor will certify to the Authority that it has completed such deletion.</p> <p>Where Personal Data is contained within the Contract documentation, this will be retained in line with the Department's privacy notice found within the Invitation to Tender.</p>
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement	<p><b>[Supplier]</b></p>

against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	
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## **Schedule 20, Annex 2 - Joint Controller Agreement**

### **1. Joint Controller Status and Allocation of Responsibilities**

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph 2 of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs 3.2 -3.12 of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [Buyer]:
  - 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
  - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### **2. Undertakings of both Parties**

- 2.1 The Supplier and the Buyer each undertake that they shall:
  - 2.1.1 report to the other Party every 6 months on:
    - a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

- b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,
- that it has received in relation to the subject matter of the Contract during that period;
- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1a) to e);
  - 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1.1c) to e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
  - 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
  - 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
  - 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
  - 2.1.7 use all reasonable endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
    - a) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

- b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
  - a) nature of the data to be protected;
  - b) harm that might result from a Personal Data Breach;
  - c) state of technological development; and
  - d) cost of implementing any measures;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach;
- 2.1.11 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
  - a) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
  - b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement (the “**IDTA**”), or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the “**Addendum**”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures;
  - c) the Data Subject has enforceable rights and effective legal remedies;
  - d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best

- endeavours to assist the non-transferring Party in meeting its obligations); and
    - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
  - 2.1.12 where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:
    - a) the transfer is in accordance with Article 45 of the EU GDPR; or
    - b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU as well as any additional measures;
    - c) the Data Subject has enforceable rights and effective legal remedies;
    - d) the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
    - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.
- 2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3. Data Protection Breach

- 3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Buyer and its advisors with:
  - 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

- 3.1.2 all reasonable assistance, including:
- a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - b) co-operation with the other Party including using such reasonable endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.
- 3.2 Each Party shall use all reasonable endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
- 3.2.1 the nature of the Personal Data Breach;
  - 3.2.2 the nature of Personal Data affected;
  - 3.2.3 the categories and number of Data Subjects concerned;
  - 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
  - 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
  - 3.2.6 describe the likely consequences of the Personal Data Breach.

#### **4. Audit**

- 4.1 The Supplier shall permit:
- 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections



concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

- 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.
- 4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. Impact Assessments

The Parties shall:

- 5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

## 6. ICO Guidance

- 6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## 7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
  - 7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors,

- on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
- 7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).
- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):
- 7.3.1 if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;
- 7.3.2 if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- 7.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

## 8. Termination

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Buyer shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 14 of the Core Terms (Ending the contract).

## **9. Sub-Processing**

In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- 9.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. Data Retention**

- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing the Contract)

Contract Details	
This variation is between:	[Buyer] ("the Buyer") And [insert name of Supplier] ("the Supplier")
Contract name:	[insert name of contract to be changed] ("the Contract")
Contract reference number:	[insert contract reference number]
Details of Proposed Variation	
Variation initiated by:	[delete as applicable: Buyer/Supplier]
Variation number:	[insert variation number]
Date variation is raised:	[insert date]
Proposed variation	
Reason for the variation:	[insert reason]
An Impact Assessment shall be provided within:	[insert number] days
Impact of Variation	
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]
Outcome of Variation	

Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"><li>• <b>[Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause]</li></ul>	
Financial variation:	Original Contract Value:	£ <b>[insert]</b> amount]
	Additional cost due to variation:	£ <b>[insert]</b> amount]
	New Contract value:	£ <b>[insert]</b> amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

---

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## Schedule 22 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule 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 Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (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;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy 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 Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables 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;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

- 2.1.3 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.

### **3. What happens if you aren't insured**

- 3.1 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.
- 3.2 Where the Supplier has failed to purchase 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 recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal 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 Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably



likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the 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 Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of [£1 million] relating to or arising out of the provision of the Deliverables 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.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 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.

## **Schedule 22, ANNEX: REQUIRED INSURANCES**

### **PART A: 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:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) 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 Deliverables and in connection with this Contract.

#### **3 Limit of indemnity**

Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form

#### **4 Territorial limits**

United Kingdom

#### **5 Period of insurance**

- 5.1 From the date of this Contract for the period of the Contract 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.

## **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 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, unexpected and accidental occurrence.

## **8 Maximum deductible threshold**

- 8.1 Not to exceed £for each and every third party property damage claim (personal injury claims to be paid in full).

## **PART B: UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

### **PART C: ADDITIONAL INSURANCES**

Professional Indemnity Insurance - £1million	Where the Buyer requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services to be maintained for 6 years after the End Date
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## Schedule 25 (Rectification Plan)

Request for <b>[Revised]</b> Rectification Plan			
Details of the Notifiable Default:	<b>[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]</b>		
Deadline for receiving the <b>[Revised]</b> Rectification Plan:	<b>[add]</b> date (minimum 10 days from request)		
Signed by Buyer:		Date:	
Supplier <b>[Revised]</b> Rectification Plan			
Cause of the Notifiable Default	<b>[add]</b> cause]		
Anticipated impact assessment:	<b>[add]</b> impact]		
Actual effect of Notifiable Default:	<b>[add]</b> effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	<b>[date]</b>	
	2.	<b>[date]</b>	
	3.	<b>[date]</b>	
	4.	<b>[date]</b>	
	<b>[...]</b>	<b>[date]</b>	
Timescale for complete Rectification of Notifiable Default	<b>[X]</b> Working Days		

Steps taken to prevent recurrence of Notifiable Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## Schedule 26 (Sustainability)

### Definitions

<b>[“Modern Slavery Assessment Tool”]</b>	means the modern slavery risk identification and management tool which can be found online at: <a href="https://supplierregistration.cabinetoffice.gov.uk/msat">https://supplierregistration.cabinetoffice.gov.uk/msat</a>
<b>[“Supply Chain Map”]</b>	means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least: <ul style="list-style-type: none"><li>(g) the name, registered office and company registration number of each entity in the supply chain;</li><li>(h) the function of each entity in the supply chain; and</li><li>(i) the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]</li></ul>
<b>“Waste Hierarchy”</b>	means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: <ul style="list-style-type: none"><li>(j) Prevention;</li><li>(k) Preparing for re-use;</li><li>(l) Recycling;</li><li>(m) Other Recovery; and</li><li>(n) Disposal.</li></ul>

### Part A

#### 1. Public Sector Equality Duty

1.1. In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support

the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

1.1.1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2. advance:

1.1.2.1. equality of opportunity; and

1.1.2.2. good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## **2. Employment Law**

2.1. The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

## **3. Modern Slavery**

3.1. The Supplier:

3.1.1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

3.1.2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;

3.1.3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

3.1.4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;



- 3.1.5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8. shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
- 3.1.9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10. shall not use or allow child or slave labour to be used by its Subcontractors; and
- 3.1.11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

#### **4. Environmental Requirements**

- 4.1. The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2. In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:
  - 4.2.1. prioritise waste management in accordance with the Waste Hierarchy as set out in Law;

- 4.2.2. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
- 4.2.3. ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3. In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4. In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 4.5. The Supplier shall 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>.

## **5. Supplier Code of Conduct**

- 5.1. In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

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

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

## **6. Reporting**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this

Part A above within fourteen (14) days of such request, [provided that such requests are limited to [two] per requirement per Contract Year].

## **Part B**

### **1. Equality, Diversity and Inclusion – Further Requirements**

- 1.1. [In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity and inclusion requirements, to be provided to the Supplier by the Buyer.]
- 1.2. [The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.]

### **2. Modern Slavery– Further Requirements**

- 2.1. [The Supplier shall comply with any request by the Buyer to complete the Modern Slavery Assessment Tool within sixty (60) days of such request.]
- 2.2. [The following shall be added to the definition of "Audit" in Schedule 1 immediately after limb (k):  
  
“(l) carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Staff in a confidential manner and in the native language of such Supplier Staff in respect of workforce conditions, working or employment practices and recruitment practices;”
- 2.3. For the purposes of an audit carried out pursuant to limb (l) of the definition of “Audit”, in addition to any other rights under the Contract, the Buyer may instruct the Supplier to carry out such an audit of any Subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Buyer within ninety (90) days of such instruction.]
- 2.4. [If the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, the Supplier shall comply with any request of the Buyer to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September\\_2019\\_Modern\\_Slavery\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf)

and such remedial action plan shall be deemed to be a Rectification Plan.]

2.5. [The Supplier shall comply with any request by the Buyer to provide a Supply Chain Map within fourteen (14) days of such request.]

2.6. [The Supplier shall comply with any request by the Buyer to provide a copy of any reports of any Subcontractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request.]

2.7. [The Supplier shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.]

2.8. [The Supplier shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Buyer and relevant national or local law enforcement agencies.]

## Part C

### 1. Social Value

1.1 The Supplier shall provide a Social Value Report to the Buyer as outlined in Table A.

**Table A: Social Value Report**

Required Detail	Frequency
A high-level summary of the Supplier's performance against the Social Value priorities over the relevant period	[Quarterly]

Performance by the Supplier against each of the Social Value KPIs set out at Table B over the relevant period	[Quarterly]
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**Table B: Social Value KPIs**

No.	Social Value Title	Description of Deliverable	Target	Frequency of Measurement	Publishable Performance Information
Social Value KPI1	Annual workshop – developing market expertise	The workshop(s) will be targeted at encouraging new suppliers in the inventory space and will give a summary of the challenges in the projects undertaken that year, the solutions implemented, and a detailed description of the whole UK inventory system. We will use the workshop to garner interest and invite prospective new suppliers to submit expressions of interest for future projects.	1x annual workshop – measured by supplier attendance	Annually	Yes

## Schedule 27 (Key Subcontractors)

### 1. Restrictions on certain subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.

- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
    - a) the data protection requirements set out in Clause 18 (Data protection);
    - b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
    - c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this contract) and 14.5 (What happens if the contract ends) of this Contract;
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
  - 1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

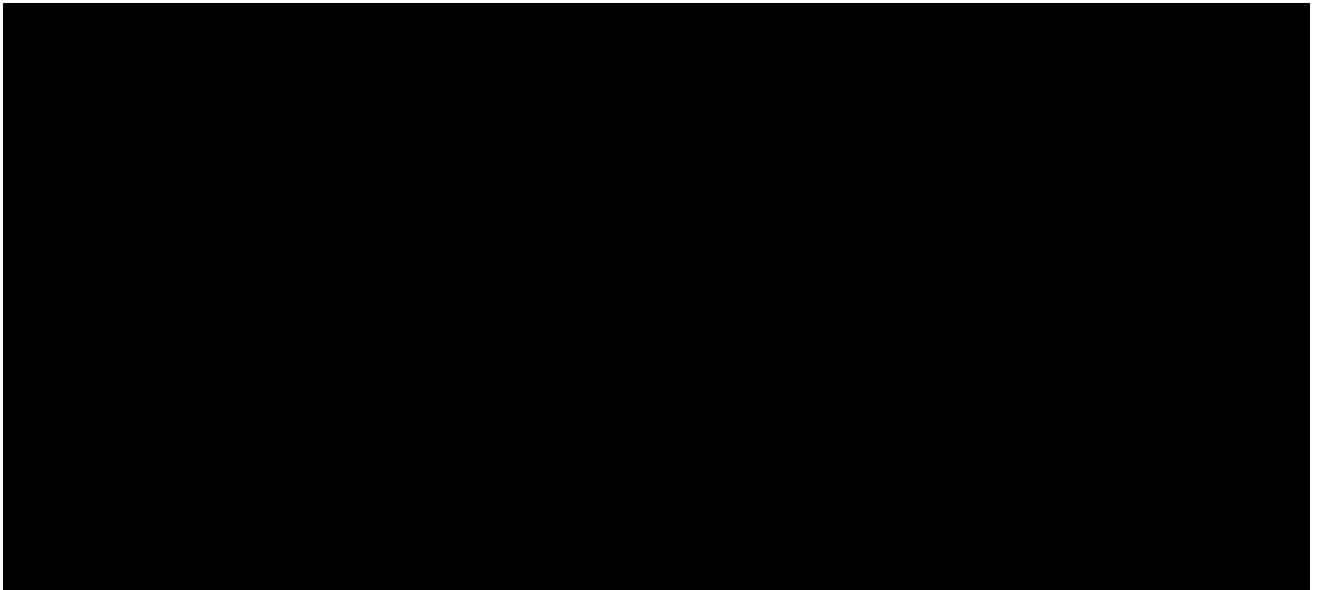
## Schedule 29 (Key Supplier Staff)

- 1.1 The Annex 1 to this Schedule lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("**Key Staff**").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
  - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.



- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

## **Schedule 29, Annex 1- Key Roles**



## Schedule 30 (Exit Management)

### 1. DEFINITIONS

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;

<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule;
<b>"Virtual Library"</b>	the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 2.2 of this Schedule.

## **2. SUPPLIER MUST ALWAYS BE PREPARED FOR CONTRACT EXIT**

- 2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Supplier shall within 30 days from the Start Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
  - 2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
  - 2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should

be maintained and kept up to date in accordance with the time period set out in the Award Form.

- 2.3 Where Schedule 7 (Staff Transfer) applies to this Contract, the Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).
- 2.4 The Supplier shall:
- 2.4.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
  - 2.4.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
- 2.5 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### **3. ASSISTING RE-COMPETITION FOR DELIVERABLES**

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

#### 4. EXIT PLAN

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph **Error! Reference source not found.** of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "Exit Plan").
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 how the Exit Information is obtained;
  - 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
  - 4.3.3 the management structure to be employed during the Termination Assistance Period;
  - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
  - 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
  - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
  - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;

- 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (*Charges*). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.
- 4.5 The Supplier shall:
- 4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - a) every [six (6) months] throughout the Contract Period;
    - b) no later than [twenty (20) Working Days] after a request from the Buyer for an up-to-date copy of the Exit Plan;
    - c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;
    - d) as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and
  - 4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.7 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. TERMINATION ASSISTANCE

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
  - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
  - 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## 6. TERMINATION ASSISTANCE PERIOD

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
  - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
  - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management

Information or any other reports nor to any other of the Supplier's obligations under this Contract;

- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7. OBLIGATIONS WHEN THE CONTRACT IS TERMINATED**

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
  - 7.2.1 cease to use the Government Data;
  - 7.2.2 vacate any Buyer Premises;
  - 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
  - 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
    - a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
    - b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's



performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.

- 7.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:

- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

- 8.2.2 which, if any, of:

- a) the Exclusive Assets that are not Transferable Assets; and
  - b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

- 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the

Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
  - 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
  - 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

## **9. NO CHARGES**

- 9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

## **10. DIVIDING THE BILLS**

- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **Schedule 30, ANNEX 1: SCOPE OF TERMINATION ASSISTANCE**

### **1.**

- 1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:**
  - 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - 1.1.3 providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;
  - 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;
  - 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
  - 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
  - 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
  - 1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;

- 1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
- 1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
- 1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:
  - a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;
- 1.1.12 knowledge transfer services, including:
  - a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
  - b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
  - c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which

may, as appropriate, include information, records and documents;

- d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions, and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

**1.2 The Supplier will:**

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

**1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.**

**1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:**

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and

- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

**and such information shall be updated by the Supplier at the end of the Termination Assistance Period.**

- 1.5 **During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:**

- 1.6 **any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:**

- 1.6.1 sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

- 1.6.2 during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

- 1.7 **the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.**

# Schedule 36 (Intellectual Property Rights)

## 1. Intellectual Property Rights

- 1.1. Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 1.2. Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

### 1.3. **Licences granted by the Supplier: Supplier Existing IPR**

- 1.3.1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 1.3.2.
- 1.3.2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Supplier Existing IPR which is reasonably required by the Buyer to enable it:
  - 1.3.2.1. or any End User to use and receive the Deliverables; or
  - 1.3.2.2. to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### 1.4. **Licences granted by the Buyer and New IPR**

- 1.4.1. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.
- 1.4.2. Where a Party acquires ownership of IPR 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.



- 1.4.3. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.

## **1.5. Open Licence Publication**

- 1.5.1. Subject to Paragraph 1.5.4, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.
- 1.5.2. Subject to Paragraph 1.5.4, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.
- 1.5.3. The Supplier will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from the Buyer ("Buyer Open Licence Request").
- 1.5.4. The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph 1.5.3 request in writing that the Buyer excludes all or part of:
  - 1.5.4.1. the New IPR; or
  - 1.5.4.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 1.5.3from Open Licence publication.
- 1.5.5. Any decision to Approve any such request from the Supplier pursuant to Paragraph 1.5.4 shall be at the Buyer's sole discretion, not to be unreasonably withheld, delayed or conditioned.
- 1.5.6. Subject to Clause 14 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

## **1.6. Third Party IPR**

- 1.6.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.6.3. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.6.3 in respect of any Third Party IPR the Supplier shall:
  - 1.6.1.1. notify the Buyer in writing; and

- 1.6.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.
- 1.6.2. 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.
- 1.6.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.

## **1.7. Termination of licences**

- 1.7.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.6 shall survive the Expiry Date and termination of this Contract.
- 1.7.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 1.7.3. Any licence granted to the Supplier pursuant to Paragraph 1.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:
  - 1.7.3.1. immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);
  - 1.7.3.2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and

- 1.7.3.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

**Schedule 36, ANNEX 1: NEW IPR**

Name of New IPR	Details

## **Schedule 4 – Tender**

Attached as separate PDF document.