**Contract Terms and Conditions**

Contract Reference: CCZZ20A84

Public Opinion Focus Groups and Online Polling

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#  Contract Terms

This Contract is made on the 8th day of January 2021 between:

HM Treasury, with offices at REDACTED (“the **Customer**”); and

Hanbury Strategy and Communications Limited a company registered in England and Wales under Company Number REDACTED whose registered office is at REDACTED (“the **Supplier**”),

Both the Customer and the Supplier can be referred to as a “**Party**” or together the “**Parties**”.

# INTRODUCTION

* 1. The Supplier is one of a number of organisations appointed by Crown Commercial Service (**CCS**) to the Dynamic Purchasing System (DPS) and is therefore able to enter into this Contract to provide the Project(s) to the Customer.
	2. This Contract, made between the Customer and the Supplier, sets out the terms of the Supplier’s appointment as a provider of the Project to the Customer. The Project will be delivered according to the terms of this Contract, any agreed Statement of Work, and the DPS Agreement.
	3. The Supplier’s appointment has been confirmed in the Letter of Appointment.
	4. The Parties agree that the Project and associated Deliverables shall be supplied in accordance with the terms of the DPS Agreement and this Contract.
1. **APPOINTMENT & STATEMENTS OF WORK**
	1. Throughout the Term of this Contract, the Supplier will perform Projects in accordance with agreed Statements of Work.
	2. Subject to Clause 1.4 the Parties may agree new Projects to be delivered under this Contract by agreeing a new Statement of Work. This must be done in writing and using the form set out at Schedule 2 (Statement of Work). Once both Parties have signed a Statement of Work, it shall form part of this Contract.
	3. Any schedule attached to a Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to a Statement of Work only applies to the relevant Project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Project as a whole.
	4. Where a Customer requires changes to the Project being provided this shall be dealt with as a proposed Variation to this Contract in accordance with the Variation procedure set out in Clause 9.
2. **TERM**
	1. This Contract starts on the **Effective Date** and ends on the **Expiry Date,** as stated in the Letter of Appointment unless changed in accordance with the terms of this Contract.
	2. The Customer may extend this Contract for any period up to the Extension Expiry Date by giving the Supplier notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
	3. The revised date the contract will end (the **New Expiry Date)** will be set out in the notice given under Clause 2.2 above.
	4. The terms and conditions of this Contract will apply throughout any extended period.
	5. Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

# CONTRACT GUARANTEE

* 1. Where the Customer has stated in the Letter of Appointment that this Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Customer), the Supplier must provide:
		1. an executed Guarantee from a Guarantor; and

* + 1. a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
	1. The Customer may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Supplier notice in writing.

# CUSTOMER’S OBLIGATIONS

* 1. The Customer will give the Supplier instructions as to its requirements for the Project. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Project.

# SERVICE DELAY, DELIVERY & RECTIFICATION Service Delivery

* 1. The Supplier will give the Customer full and clear instructions as to what, if any, Customer Materials it reasonably requires to perform the Project.
		1. comply with all Law;
		2. use all reasonable and proper skill and care in its performance of Project;
		3. comply with all reasonable Customer instructions regarding the Project, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);
		4. keep Customer Materials under its control safe and secure and in accordance with any security policy provided by the Customer; and
		5. provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.

# Delay

* 1. If the Customer materially breaches its obligations in connection with this Contract (including its payment obligations), and consequently delays or prevents the Supplier from performing any of the agreed Services or providing any of the agreed Deliverables this will be a “**Customer Cause”.** In the event of a Customer Cause, the Supplier will be granted an appropriate extension of time (to be approved by the Customer, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Supplier will not be liable for any Losses incurred by the Customer as a result of Customer Cause, provided the Supplier complies with its obligations set out at Clause 5.4.
	2. The Supplier must notify the Customer within two (2) Working Days of the Supplier becoming aware that the Customer has breached, or is likely to breach, its obligations in connection with this Contract. This notice must detail:
		1. the Customer Cause and its actual or potential effect on the Supplier’s ability to meet its obligations under this Contract, and
		2. any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause.
	3. The Supplier must use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause. The Supplier must try to mitigate against any Losses that the Customer or the Supplier may incur, and the duration and consequences of any delay or anticipated delay.
	4. If at any time the Supplier becomes aware that it may not be able to deliver the Project by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Supplier will immediately notify the Customer of the Default and the reasons for the Default.
	5. If the Default described in Clause 5.5 above is in the Customer’s opinion capable of remedy the Customer may, up to 10 Working Days from being notified of the Default, instruct the Supplier to comply with the Rectification Plan Process.

# Rectification Plan Process

* 1. If instructed to comply with the Rectification Plan Process by the Customer under Clause 5.6 above, the Supplier will submit a draft Rectification Plan to the Customer to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Supplier shall submit a draft Rectification Plan even if the Supplier does not agree that the Default is capable of remedy.
	2. The draft Rectification Plan shall set out:
		1. full details of the Default that has occurred, including the underlying reasons for it;
		2. the actual or anticipated effect of the Default; and
		3. the steps which the Supplier proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
	3. The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier’s reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
	4. The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
		1. is insufficiently detailed to be capable of proper evaluation;
		2. will take too long to complete;
		3. will not prevent reoccurrence of the Default;
		4. will rectify the Default but in a manner which is unacceptable to the Customer; or
		5. will not rectify the Default.
	5. The Customer will tell the Supplier as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
	6. If the customer rejects the draft Rectification Plan, the customer will give reasons for its decision in its rejection notice. The Supplier must take these reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit a revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer’s rejection notice.
	7. If the Customer agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

# SUPPLIER: OTHER APPOINTMENTS

* 1. Adverse public perception could have a detrimental impact on the Customers desired outcomes for the Project. To minimise this risk, the Supplier must not, without the Customer’s Approval (not to be unreasonably withheld), provide research services to a third party during the Term of this Contract where the provision of such services (in the reasonable opinion of the Customer):
		1. has the potential to adversely affect the Customer’s desired outcome of the Project or diminish the trust that the public places in the Customer; or
		2. is likely to cause embarrassment to the Customer or bring the Customer into disrepute or may result in a conflict of interest for the Customer.
	2. Where the Supplier is already providing research services to a third party in the situations set out in 6.1 prior to the Effective Date, the Supplier warrants that it has informed the Customer of this before entering into this Contract.
	3. If the Supplier becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Supplier must notify the Customer immediately, providing full details of the nature of the breach and the likely impact on any Projects
	4. If the Supplier breaches Clause 6.1, the Customer may terminate this Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

# CUSTOMER: OTHER APPOINTMENTS

7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Customer is entitled to appoint any other Supplier to perform the Project which are the same or similar to the Project.

# PERSONNEL

* 1. The Supplier must ensure that Supplier personnel who provide the Project:
		1. are appropriately experienced, qualified and trained to provide the Project in accordance with this Contract;
		2. apply all reasonable skill, care and diligence in providing the Project;
		3. obey all lawful instructions and reasonable directions of the Customer and provide the Project to the reasonable satisfaction of the Customer, and
		4. are vetted in accordance with Good Industry Practice and where applicable, the security requirements of the Customer and the Standards.
	2. The Supplier will be liable for all acts or omissions of the Supplier personnel. Any act or omission of a member of any Supplier personnel which results in a breach of this Contract is a breach by the Supplier.
	3. The Customer acknowledges and agrees that it may be necessary for the Supplier to replace the personnel providing the Project with alternative personnel with similar levels of seniority and experience.
	4. The Supplier will seek to ensure that any Key Individual responsible for the provision of the Project will remain involved in the Project. If any Key Individual leaves the Supplier, or ceases to be involved in the provision of the Project for any reason (for example, if they are promoted to a different role within the Supplier), the Supplier will consult with the Customer and, subject to the Customer ’s Approval, appoint a suitable replacement.
	5. If the Customer reasonably believes that any of the Supplier personnel are unsuitable to undertake work on this Contract, it will notify the Supplier who will then end the person’s involvement in providing the Project.

# VARIATIONS AND CANCELLATIONS

* 1. Either Party may request a change to this Contract, a Project or a Statement of Work. Any requested change must not amount to a material change of this Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
	2. A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
	3. Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Customer, having regard to the nature of the Project and the proposed Variation.
	4. If the Supplier requests a Variation, the Customer can ask the Supplier to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
		1. the impact of the proposed Variation on the Project and Supplier’s ability to meet its other obligations under this Contract (including in relation to other Statements of Work);
		2. the initial cost of implementing the proposed Variation and any ongoing costs post- implementation;
		3. any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
		4. a timetable for the implementation, together with any proposals for the testing of the Variation; and
		5. any other information the Customer reasonably asks for in response to the Variation request.
	5. The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
	6. If the Parties agree the Variation, the Supplier will implement it, and be bound by it as if it was part of this Contract.
	7. Until a Variation is agreed, the Supplier must continue to perform and be paid for the Project as originally agreed, unless otherwise notified by the Customer.
	8. Subject to Clauses 9.9 and 23.1 the Customer can require the Supplier to suspend or cancel any Project or Statement of Work, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Customer Approver in writing. The Supplier will take all reasonable steps to comply with any such request as soon as possible.
	9. In the event of any cancellation under Clause 9.8, the Customer will pay the Supplier all Contract Charges reasonably and properly incurred by the Supplier during the Project Notice Period, provided that the Supplier uses all reasonable endeavours to mitigate any charges or expenses.

# APPROVALS AND AUTHORITY

* 1. For the purposes of this Contract, any reference to Customer Approval means written approval in one of the following ways:
		1. the Customer issuing a purchase order bearing the signature of an Authorised Customer Approver, or
		2. e-mail from the individual business e-mail address of an Authorised Customer Approver, or
		3. the signature of an Authorised Customer Approver on the Supplier’s documentation
	2. Any reference to Supplier Approval means written approval in one of the following ways:
		1. e-mail from the individual business e-mail address of an Authorised Supplier Approver, or
		2. the signature of an Authorised Supplier Approver on the Customer’s documentation
	3. The Supplier will seek the Customer’s Approval of:
		1. any estimates or quotations for any costs to be paid by the Customer that are not agreed in a Statement of Work.
	4. The Supplier will seek the Customer’s Approval of any draft Deliverables. The Customer’s Approval will be the Supplier’s authority to proceed with the use of the relevant Deliverables.
	5. If the Customer does not approve of any matter requiring Approval, it must notify the Supplier of its reasons for disapproval within fourteen (14) days of the Supplier’s request.
	6. If the Customer delays giving Approval or notifying the Supplier as to its disapproval, the Supplier will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

# PROJECT MANAGEMENT

* 1. During the Term of this Contract, the Supplier will:
		1. keep the Customer fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties.
		2. promptly inform the Customer of any actual or anticipated problems relating to provision of the Deliverables.
	2. During the Term, the Parties’ respective project managers will arrange and attend meetings to review the status and progress of the Project(s) and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.
	3. Unless otherwise agreed in the Statement of Work, the Supplier will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within three (3) Working Days of such discussions. If the Customer does not question any of the subject matter of a contact report within seven (7) Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

# FEES AND INVOICING

* 1. The Contract Charges for the Project will be the full and exclusive remuneration of the Supplier for supplying the Project. Unless expressly agreed in writing by the Customer in the Statements of Work, the Contract Charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Project.
	2. All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Project.
	3. The Supplier will invoice the Customer in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Project supplied in the invoice period.
	4. The Customer will pay the Supplier the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under this Contract, withhold or reduce payments in the event of unsatisfactory performance.
	5. If the Customer does not pay an undisputed amount properly invoiced by the due date, the Supplier has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
	6. The Customer is entitled to deduct from any sum due any money that the Supplier owes the Customer. This includes any sum which the Supplier is liable to pay to the Customer in respect of breach of this Contract. In these circumstances, the Supplier may not assert any credit, set-off or counterclaim against the Customer.
	7. The Supplier will indemnify the Customer on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Contract. Any amounts due under Clause 12.2 will be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
	8. If there is a dispute between the Parties about an amount invoiced, the Customer will pay the undisputed amount by the due date. The Supplier will not suspend the supply of the Project in any Project, unless the Supplier is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 23.7.7.
1. **THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING Assignment and Sub-Contracting**
	1. Other than where a Sub-Contractor is agreed in the Letter of Appointment or a

 Statement of Work, the Supplier will not, without the Approval of the Customer, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Contract or any part of it.

* 1. In requesting Approval to sub-contract, the Supplier will:
		1. use reasonable care and skill in the selection of proposed Sub-Contractors;
		2. if the Customer requests, the Supplier will obtain more than one quote for a particular sub-contracted service; and
		3. provide the Customer with a business case for sub-contracting all or part of the Project, identifying the reasons for the Supplier to sub-contract to its proposed Sub-Contractor. The Customer may reject the Supplier’s request to appoint a proposed Sub-Contractor if it considers the proposed Sub-Contractor does not provide value for money.
	2. If the Customer consents to the Supplier’s proposed Sub-Contractor, it shall be a Sub- Contractor as the term is defined in Schedule 1 (Definitions).
	3. In granting consent to any assignment, novation sub-contracting or disposal, the Customer may set additional terms and conditions it considers necessary.
	4. The Supplier shall ensure that its Sub-Contractor does not further sub-contract all or part of the Project or Deliverables without the Customer’s Approval.
	5. Any contracts the Supplier enters into with third party suppliers for Services and Deliverables (“**Sub-Contracts**”) must be on terms that are in line with the Supplier’s standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Contract.
	6. Provided that the Supplier has notified the Customer of any significant restrictions or contract terms contained in any Sub-Contracts, the Customer hereby acknowledges that:
		1. its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
		2. it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Supplier is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Customer or its Affiliates.
	7. The Supplier will promptly provide the Customer with a copy of any Sub-Contract if requested to do so.
	8. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
	9. The Supplier will obtain the Customer’s Approval before commissioning services from any Supplier Affiliate.

# Supply Chain Protection

* 1. The Supplier will ensure that all Sub-Contracts contain provisions:
		1. Requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
		2. requiring the Supplier to verify any invoices submitted by a Sub-Contractor in a timely manner;
		3. giving the Customer the right to publish the Supplier’s compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
		4. giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and
		5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.
1. **DISCOUNTS AND REBATES**
	1. The Supplier will disclose to the Customer any commission, discount or rebate earned by the Supplier arising in respect of third party costs directly related to the Projects. The Customer will receive the full benefit of such commission, discount or rebate.
2. **CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION CONFIDENTIALITY**
	1. For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a “**Recipient**”. A Party which discloses or makes available Confidential Information is a “**Disclosing Party**”.
	2. Unless a Recipient has express permission to disclose Confidential Information, it must:
		1. treat the Disclosing Party's Confidential Information as confidential and store it securely;
		2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or with the owner's prior written consent;
		3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract, and
		4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
	3. A Recipient is entitled to disclose Confidential Information if:
		1. where disclosure is required by applicable Law or by a court with the required jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information Contract and extent of the disclosure;
		2. if the Recipient already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
		3. if the information was given to it by a third party without obligation of confidentiality;
		4. if the information was in the public domain at the time of the disclosure;
		5. if the information was independently developed without access to the Disclosing Party’s Confidential Information;
		6. to its auditors or for the purposes of regulatory requirements;
		7. on a confidential basis, to its professional advisers on a need-to-know basis; and/or
		8. to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
	4. If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
	5. Subject to Clauses 15.3 the Supplier may disclose Confidential Information, on a confidential basis, to:
		1. Supplier personnel or Sub-Contractors who are directly involved in the provision of the Project and need to know the Confidential Information to enable performance under this Contract, and
		2. its professional advisers for the purposes of obtaining advice in relation to this Contract.
	6. Where the Supplier discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Contract.
	7. The Customer may disclose the Confidential Information of the Supplier:
		1. to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
		2. to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
		3. if disclosure is necessary or appropriate in the course of carrying out its public functions
		4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Contract
		5. on a confidential basis for the purpose of the exercise of its rights under this Contract, or
		6. to a proposed successor in title (transferee, assignee or novatee) of the Customer.
	8. Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 15.
	9. Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
	10. If the Supplier fails to comply with this Clause 15, the Customer can terminate this Contract.

# TRANSPARENCY

* 1. Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract (and any Transparency Reports submitted by the Supplier under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 [www.gov.uk/government/uploads/system/uploads/attachment\_data/file/458554/Procureme nt\_Policy\_Note\_13\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein.
	2. The Customer will determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but will have absolute discretion over the final decision.
	3. Notwithstanding any other provision of this Contract, the Supplier consents to the Customer publishing this Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).
	4. The Supplier will cooperate with the Customer to enable publication of this Contract.

# FREEDOM OF INFORMATION

* 1. The Customer is subject to the requirements of the FOIA and the EIRs. The Supplier will:
		1. provide all necessary assistance to the Customer to enable it to comply with its Information disclosure obligations.
		2. send all Requests for Information it receives relating to this Contract to the Customer as soon as practicable and within a maximum of two (2) Working Days from receipt.
		3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days of the Customer’s request.
	2. The Supplier must not respond directly to a Request for Information without the Customer’s Approval.
	3. The Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer will take reasonable steps to notify the Supplier of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Customer will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.
1. **SUPPLIER WARRANTIES**
	1. The Supplier warrants that:
		1. it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party;
		2. the personnel who perform the Project are competent and suitable do so;
	2. The Supplier undertakes that:
		1. the use of the Deliverables by the Customer in accordance with this Contract and for the purposes set out in the Statement of Work will not infringe the copyright of any third party; and
		2. as at the date they are delivered, the Deliverables of this Contract may be used for the purposes set out in the Statement of Work and comply with all relevant regulations and standards stipulated within the Statement of Work.
	3. The Supplier hereby indemnifies the Customer against any Losses incurred by the Customer as a result of breach by the Supplier of its warranty and undertaking in Clauses 16.1 and 16.2.
2. **CUSTOMER WARRANTIES**
	1. The Customer warrants that:
		1. it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party; and
		2. the Customer Materials will not, when used in accordance with this Contract and any written instructions given by the Customer, infringe third party copyright.
3. **LIABILITY**
	1. Nothing in this Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.
	2. Subject always to Clauses 18.1 and 18.3, the maximum amount the Supplier can be liable for in respect of all Defaults shall in no event exceed:
		1. in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Customer for the first Contract Year;
		2. in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
		3. in relation to any Defaults occurring in each Contract year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract charges payable to the Supplier under this Contract in the last Contract Year commencing during the Term.
	3. Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:
		1. loss of profits
		2. loss of goodwill or reputation
		3. loss of revenue
		4. loss of savings whether anticipated or otherwise; or
		5. indirect or consequential loss or damage of any kind
	4. Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer’s total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.
4. **INSURANCE**
	1. The Supplier will hold insurance policies to the value sufficient to meet its liabilities in connection with this Contract (including any specific insurance requirements as are set out in the Statements of Work). The Supplier will provide the Customer with evidence that such insurance is in place at the Customer’s request.
	2. The Supplier will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
	3. If, for whatever reason, the Supplier fails to comply with the provisions of this Clause 19 the Customer may make alternative arrangements to protect its interests. If the Customer does so, it may recover the premium and other costs of such arrangements as a debt due from the Supplier.
	4. Any insurance effected by the Supplier will not relieve it of any liability under this Contract. It is the Supplier’s responsibility to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.
	5. The Supplier must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Supplier will use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
5. **INTELLECTUAL PROPERTY RIGHTS (IPR)**
	1. The Supplier acknowledges that the Customer retains ownership of Customer

 Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Customer Materials produced by the Supplier in the course of delivering the Project. The Customer hereby grants to the Supplier a non-exclusive license to use the Customer Materials during the applicable Project Term solely for the purposes of delivering the Project.

* 1. The Supplier hereby:
		1. assigns to the Customer all of the Intellectual Property Rights other than copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Supplier Materials; and
		2. assigns to the Crown all of the copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Supplier Materials.
	2. All Intellectual Property Rights in the Supplier Proprietary Materials remain the property of the Supplier. The Supplier grants to the Customer a non-exclusive, royalty-free license to use any Supplier Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work.
	3. All Intellectual Property Rights in Project Specific Materials shall be owned by the Customer and the Customer hereby grants a non-exclusive, royalty-free license to use any Project Specific Materials for the purposes of providing the Project throughout the Term.
	4. Prior to delivery of the Deliverables to the Customer, the Supplier will obtain all licenses or consents in respect of Third Party Materials that are required so the Customer can use these Third Party Materials for the purposes set out in the Statement of Work. The Supplier will notify the Customer of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.
	5. The Supplier agrees:
		1. at the Customer ’s request and expense, to take all such actions and execute all such documents as are necessary (in the Customer ’s reasonable opinion) to enable the Customer to obtain, defend or enforce its rights in the Supplier Materials and Deliverables; and
		2. neither to do nor fail to do any act which would or might prejudice the Customer’s rights under this Clause 20.
	6. To the extent permitted by law, the Supplier shall ensure that all Moral Rights in the Supplier Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier agrees not to assert any Moral Rights in respect of the Supplier Materials.
	7. The Supplier will use its reasonable endeavours to ensure that all Moral Rights in

 Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials. If the Supplier cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Supplier will notify the Customer and will obtain the Customer ’s Approval prior to incorporating such Third Party Materials into the Deliverables.

* 1. During the Term, if the Supplier is asked to take part in a competitive pitch or other similar process for the Customer, then notwithstanding any of the previous provisions of this Clause 20, the Supplier will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Supplier is successful in such pitch and the Parties agree that such Materials will be used in a Project the Supplier will assign all such Intellectual Property Rights to the Customer.
	2. The Supplier is not liable in connection with this Contract for any modifications, adaptations or amendments to any Deliverables made by the Customer or by a third party on the Customer’s behalf after the Supplier has handed them over. The Supplier is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Customer or its Affiliates.
	3. The terms of and obligations imposed by this Clause 20 continue after the termination of this Contract.
	4. The Supplier will indemnify the Customer in full against all Losses (whether direct or indirect) in connection with any claim made against the Customer for actual or alleged infringement of a third party’s intellectual property rights in connection with the supply or use of the Project, if the claim is attributable to the acts or omission of the Supplier any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer.
1. **AUDIT**
	1. The Supplier will keep and maintain full and accurate records and accounts of the operation of this Contract, the Project provided under it, any Sub-Contracts and the amounts paid by the Customer for at least seven (7) years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
	2. The Supplier will:
		1. keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and
		2. afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Supplier and/or its Sub-Contractors with the Supplier's obligations under this Contract, and in particular to:
			1. verify the accuracy of the Contract Charges and any other amounts payable by the Customer under this Contract (and proposed or actual variations to them in accordance with this Contract);
			2. 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 Project;
			3. verify the Supplier's and each Sub-Contractor's compliance with the applicable Laws;
			4. identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Customer is not obliged to inform the Supplier of the purpose or objective of its investigations;
			5. identify or investigate any circumstances which may impact upon the financial stability of the Supplier or any Sub-Contractors or their ability to perform the Project;
			6. obtain such information as is necessary to fulfil the Customer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes, including the supply of information to the Comptroller and Auditor General;
			7. review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
			8. carry out the Customer’s internal and statutory audits and to prepare, examine and/or certify the Customer’s annual and interim reports and accounts
			9. enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
			10. review any records relating to the Supplier's performance of the provision of the Project and to verify that these reflect the Supplier's own internal reports and records;
			11. verify the accuracy and completeness of any information delivered or required by this Contract;
			12. inspect the Customer Materials, including the Customer 's Intellectual Property Rights, equipment and facilities, for the purposes of ensuring that the Customer Materials are secure; and
			13. review the integrity, confidentiality and security of any Customer data.
		3. audit does not unreasonably disrupt the Supplier or delay the provision of the Project (although the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.)
	3. Subject to the Supplier's rights in respect of Confidential Information, the Supplier will on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:
		1. all reasonable information requested by the Customer within the scope of the audit;
		2. reasonable access to sites controlled by the Supplier and to any equipment used in the provision of the Project; and
		3. access to the Supplier personnel.
	4. The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Supplier, whereby the Supplier will reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.
	5. If an Audit reveals that the Customer has been overcharged, the Supplier will reimburse to the Customer the amount of the overcharge within thirty (30) days. If an Audit reveals the Supplier has been underpaid, the Customer shall pay to the Supplier the amount of the underpayment within thirty (30) days.
2. **NOT USED**
3. **TERMINATION**

***Customer Rights of Termination***

* 1. The Customer may, by giving no less than three (3) month’s written notice to the Supplier, terminate this Contract without cause.
	2. The Customer may terminate or cancel a Project at any time subject to Clause 9.8 and payment of all Contract Charges specifically set out at Clause 9.9 of Clause 9 (Variations and Cancellations).
	3. The Customer may terminate this Contract or a Project by written notice to the Supplier with immediate effect if the Supplier:
		1. commits a material Default which cannot be remedied;
		2. repeatedly breaches any of the terms and conditions of this Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
		3. commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer within thirty (30) days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
		4. breaches any of the provisions of Clauses 6.1 (Supplier: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
		5. is subject to an Insolvency Event; or
		6. fails to comply with legal obligations.
	4. The Supplier must notify the Customer as soon as practicable of any Change of Control or any potential Change of Control.
	5. The Customer may terminate this Contract with immediate effect by written notice to the Supplier within six (6) Months of:
		1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
		2. where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

* 1. The Customer may terminate this Contract or a Project by giving the Supplier at least fourteen (14) days’ notice if:
		1. the DPS Agreement is terminated for any reason;
		2. the Parties fail to agree a Variation under Clause 9; or
		3. the Supplier fails to implement an agreed Variation.
	2. Where this Contract is conditional upon them Supplier procuring a Guarantee pursuant to Clause 3 (Contract Guarantee), the Customer may terminate this Contract by issuing a notice of termination Notice to the Supplier where:
		1. the Guarantor withdraws the Guarantee for any reason;
		2. the Guarantor is in breach or anticipatory breach of Guarantee;
		3. an Insolvency Event occurs in respect of the Guarantor; or
		4. the Guarantee becomes invalid or unenforceable for any reason whatsoever,
		5. and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer; or
		6. the Supplier fails to provide the documentation required by Clause 3.1 by the date so specified by the Customer.

## Supplier Rights to Terminate

* 1. The Supplier may terminate a Project by written notice to the Customer if:
	2. the Customer has not paid any undisputed amounts falling due under that Project, and
	3. the undisputed sum due remains outstanding for forty (40) Working Days after the Customer has received a written notice of non-payment from the Supplier specifying:
		+ 1. the Customer’s failure to pay;
			2. the correct overdue and undisputed sum;
			3. the reasons why the undisputed sum is due; and
			4. the requirement on the Customer to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Customer exercising its rights under this Contract (including the right to set off under Clause 29). This Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Contract including Clause 30 (Retention and Set off).

* 1. The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).
1. **CONSEQUENCES OF TERMINATION**
	1. Termination of a Project in accordance with the terms of this Contract by either Party shall not serve to terminate this Contract, which will continue in full force and effect.
	2. If this Contract is terminated, all ongoing and outstanding Projects will also terminate on the same date as this Contract.
	3. Upon termination of this Contract or a Project for any reason:
		1. the Expiry Date or New Expiry Date shall be the date this Contract terminates;
		2. the Customer will pay the Supplier all Contract Charges falling properly due and payable to the Supplier prior to the date of termination (including in accordance with Clause 9 where relevant);
		3. each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and
		4. the Supplier and its staff will vacate any premises of the Customer occupied for any purpose of providing the Project or Deliverables.
	4. Any provisions of this Contract which are to continue after termination will remain in full force and effect after this Contract is terminated. Such provisions may include (but are not limited to):
		1. Clause 15 (Confidentiality, Transparency and Freedom of Information)
		2. Clause 16 (Supplier warranties)Clause 17 (Customer warranties)
		3. Clause 18 (Liability)
		4. Clause 19 (Insurance)
		5. Clause 20 (Intellectual Property Rights)
		6. Clause 21 (Audit)
		7. Clause 23 (Termination)
		8. Clause 26 (Notices)
		9. Clause 27 (Staff Transfer)
		10. Clause 28 (Third Party Rights)
		11. Clause 29 (GDPR, Security & Publicity)
		12. Clause 32 (General) and
		13. Clause 34 (Governing law and jurisdiction)
		14. Contract Schedule 1 (Definitions and Interpretation), Contract Schedule 3 (Staff Transfer), Contract Schedule 4 (Dispute Resolution Procedure).
2. **FORCE MAJEURE**
	1. Neither Party will have any liability under or be in breach of this Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).
	2. Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for sixty (60) consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this DPS Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.
	3. If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Contract as far as is possible. Where the Supplier is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
3. **NOTICES**
	1. Any notices sent under this Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

|  |
| --- |
|  |
| **Notice delivered** | **Deemed time of delivery** | **Proof of service** |
| In person | At the time of delivery | Proof that delivery was made (e.g. a signature is obtained) |
| By first class post, special delivery or other recorded delivery | 2 Working Days from the date of posting | Proof that the envelope was addressed and delivered into the custody of the postal authorities |
| Email | 09:00 hours on the first Working Day after sending | Dispatched in an emailed pdf to the correct email address without any error message |

* 1. The address and email address of each Party will be:
		1. REDACTED
	2. For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

# STAFF TRANSFER

* 1. The Parties agree that
		1. if providing the Project means staff must be transferred from the Customer to the Supplier, where the commencement of the provision of the Project or any part of the Project results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:
			1. where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 3 (Staff Transfer) will apply
			2. where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 3 (Staff Transfer) will apply
			3. where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
			4. Part C of Schedule 3 (Staff Transfer) will not apply
	2. Where providing the Project does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer)) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and
	3. Part D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the

 Services or any part of the Project.

* 1. Both during and after the Term, the Supplier will indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer due to any act or omission of the Supplier or any Supplier personnel.
1. **THIRD PARTY RIGHTS**
	1. Except for CCS and the persons that the provisions of Schedule 3 of this Contract confer benefits on, a person who is not a Party to this Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
2. **DATA PROTECTION, SECURITY AND PUBLICITY**
	1. In addition to its general security obligations under this Contract, the Supplier shall comply with any security requirements specifically set out in the Statement of Work.

# Data Protection

* 1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Contract Schedule 7 (Processing, Personal Data and Data Subjects) by the Customer and may not be determined by the Supplier.
	2. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
	3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
		1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Project;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
		1. process that Personal Data only in accordance with Schedule 7 (Processing, Personal Data and Data Subjects), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
		2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Contract Schedule 7 (Processing, Personal Data and Data Subjects));
			2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
				1. are aware of and comply with the Supplier’s duties under this clause;
				2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
				3. 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 Customer or as otherwise permitted by this Agreement; and
				4. have undergone adequate training in the use , care, protection and handling of Personal Data; and
		4. not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
			1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Supplier 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 Customer in meeting its obligations); and
			4. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
		5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
	5. Subject to Clause 29.7, the Supplier shall notify the Customer immediately if it:
		1. notify the Customer promptly if the Supplier receives a Data Subject Access Request (or purported Data Subject Access Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, any complaint, notice or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
		5. receives a request from any third Party for disclosure of Personal Data where that relates directly to its compliance with such request is required or purported to be required by Law; or Data Protection Legislation and/or the processing of personal data under or in connection with this Contract;
		6. becomes aware of a Data Loss Event.
	6. The Supplier’s obligation to notify under Clause 29.6 shall include the provision of further information to the Customer in phases, as details become available.
	7. Taking into account the nature of the processing, the Supplier shall provide the Customer the Customer with full cooperation and assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.6 (and insofar as possible (within the timescales reasonably required by the Customer) including by promptly providing:
		1. the Customer with full details and copies of the complaint, communication or request;
		2. the Customer) in relation to any such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; complaint, communication or request;
		3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as if requested by the Customer following any Data Loss Event;
		5. assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with Customer, provide a written description of the Information Commissioner's Office.
	8. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
		1. the Customer determines that the processing is not occasional;
		2. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
		3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	9. The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.
	10. The Supplier shall designate a data protection officer if required and use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation.
	11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
		1. notify the Customer in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Customer;
		3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 29.12 such that they apply to the Sub-processor; and
		4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
	12. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
	13. The Customer may, at any time on not less than 30 Working Days’ notice, revise this clause 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 this Agreement).
	14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
	15. The Supplier will not cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation, to the extent the Supplier is aware (or ought reasonably to have been aware), that the same would be a breach of such obligations. It will not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission under Article 25(6) of Directive 95/46/EC without Approval from the Customer.
	16. The Supplier will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
	17. Notwithstanding Clause 28.6, if Malicious Software is found, the Parties will co- operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Project.

# Customer Data

* 1. The Supplier will not store, copy, disclose, or use the Customer Data except as necessary to perform its obligations under this Contract or where the Customer has given Approval.
	2. If any Customer Data is held and/or Processed by the Supplier, the Supplier must supply that Customer Data to the Customer, at the time and in the format the Customer requests.
	3. The Supplier is responsible for preserving the integrity of any Customer Data it holds or processes, and preventing its corruption or loss.
	4. The Supplier will perform secure back-ups of all customer data and shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) on request.
	5. The Supplier will ensure that any system it uses to holds any Customer Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Customer Data.
	6. If any time the Supplier suspects or has any reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way, then the Supplier must notify the Customer immediately. This notification must contain information detailing the remedial action the Supplier proposes to take.

# Publicity and Branding

* 1. The Supplier may not make any press announcements or publicise this Contract or use the Customer's name or brand in any promotion or marketing or announcement of orders without Approval from the Customer.
	2. The Supplier will seek the Customer’s Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

1. **RETENTION AND SET OFF**
	1. If the Supplier owes the Customer any money, the Customer may retain or set off this money against any amount owed to the Supplier under this Contract or any other agreement between the Supplier and the Customer. In order to exercise this right, the Customer will, within thirty (30) days of receipt of the relevant invoice, notify the Supplier of its reasons for retaining or setting off the relevant Contract Charges.
	2. The Supplier will make any payments due to the Customer without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer.
2. **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
	1. Where the Supplier or any Supplier personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier will:
		1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, and
		2. indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Project by the Supplier or any Supplier Personnel.
	2. If any of the Supplier Personnel is a Worker as defined in Contract Schedule 1 (Definitions) who receives consideration relating to the Project, then, in addition to its obligations under Clause 31.1, the Supplier must ensure that its contract with the Worker contains the following requirements:
		1. that the Customer may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 31.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided
		2. that the Worker's contract may be terminated at the Customer’s request if:
			1. the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 31.2.1 and/or
			2. the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 31.2.1, or confirms that the Worker is not complying with those requirements
		3. that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.
3. **PREVENTION OF FRAUD AND BRIBERY**
	1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:
		1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
		2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
	2. The Supplier must not:
		1. commit a Prohibited Act; or
		2. do or suffer anything to be done which would cause the Customer or any of the Customer’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
	3. The Supplier shall during the Term:
		1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
		2. keep appropriate records of its compliance with its obligations under 32.3.1 and make such records available to the Customer on request;
		3. if so required by the Customer, within 20 days of the Effective Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Project in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
	4. have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Supplier staff or Sub-Contractors or any person acting on the Supplier’s behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Customer on request.
	5. The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Supplier staff or Sub-Contractors have:
		1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
		2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
		3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract; or
		4. otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
	6. If the Supplier makes a notification to the Customer under to Clause 32.5, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
	7. If the Supplier breaches Clause 32.5, the Customer may by notice:
		1. require the Supplier to remove any Supplier Personnel whose acts or omissions have caused the Supplier’s breach from any Project; or
		2. immediately terminate this Contract for material Default.
	8. Any notice served by the Customer under Clause 32.5 shall set out:
		1. the nature of the Prohibited Act;
		2. the identity of the Party who the Customer believes has committed the Prohibited Act;
		3. the action that the Customer has elected to take; and
		4. if relevant, the date on which this Contract shall terminate.
4. **GENERAL**
	1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licenses and permissions to enter into and perform
	2. its obligations under this Contract, and that this Contract is executed by its duly authorised representative.
	3. This Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.
	4. Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
	5. Any entire or partial waiver or relaxation of any of the terms and conditions of this Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Contract.
	6. This Contract does not constitute or imply any partnership, joint venture, Supplier, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party’s behalf.
	7. Unless expressly stated in this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
	8. If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Contract.

# DISPUTE RESOLUTION

* 1. The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
	2. The Supplier shall continue to provide the Project in accordance with the terms of this Contract until a Dispute has been resolved.

# GOVERNING LAW AND JURISDICTION

* 1. This Agreement will be governed by the laws of England and Wales.
	2. Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.
1. **Additional Clauses**
	1. Where the Customer has so specified in the Letter of Appointment, the Supplier shall comply with the provisions of set out in Schedule 6 (Additional Clauses).

# SCHEDULE 1

# Definitions and Interpretation

1. **INTERPRETATION**
	1. In this Contract, any references to numbered Clauses and schedules refer to those within this Contract unless specifically stated otherwise. If there is any conflict between this Contract, the Letter of Appointment, the provisions of the DPS Agreement and the Statements of Work(s), the conflict shall be resolved in accordance with the following order of precedence:
		1. the Letter of Appointment (except the Supplier Proposal)
		2. the Statement of Work
		3. the Contract Terms
		4. the Supplier Proposal, and
	2. The definitions and interpretations used in this Contract are set out in this Schedule 1 (Definitions).
	3. Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.
	4. Unless the context otherwise requires:
		1. words importing the singular meaning include where the context so admits the plural meaning and vice versa
		2. words importing the masculine include the feminine and the neuter and vice versa
		3. the words ‘include’, ‘includes’ ‘including’ ‘for example’ and ‘in particular’ and words of similar effect will not limit the general effect of the words which precede them
		4. references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
		5. references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
		6. headings are included in this Contract for ease of reference only and will not affect the interpretation or construction of this Contract
	5. If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Schedule, it shall have the meaning given to it in the DPS Agreement. If no meaning is given to it in the DPS Agreement, it shall be interpreted in accordance with the relevant market sector/ industry meaning. Otherwise it shall be interpreted in accordance with the dictionary.
	6. In this contract the following terms have the following meaning:

|  |  |
| --- | --- |
| **Agreement**  | means this Contract; |
| **Approval** | means the Approval given in accordance with Clause 10.1 or 10.2 as the context requires and "**Approve**", “**Approving”** and "**Approved**" shall be construed accordingly. |
| **Affected Party** | means the Customer or the Supplier affected by theevent  |
| **Associates** | A Party’s employees, officers, agents, sub-contractors or authorised representatives. |
| **Authorised Supplier Approver** | Any personnel of the Supplier who have the authority to contractually bind the Supplier in all matters relating to Contract. They must be named in the applicable Statement of Work, and the Customer must be notified if they change. |
| **Authorised Customer Approver** | Any personnel of the Customer who have the authority to contractually bind the Customer in all matters relating to this Contract. They must be named in the applicable Statement of Work, and the Supplier must be notified if they change. |
| **Contract** | This contract between the Customer and the Supplier (entered into under the provisions of the DPS Agreement), which consists of the terms set out in the Letter of Appointment, the Contract Terms, the Schedules and any Statement of Work. |
| **Contract Terms** | The terms and conditions set out in this Contract including this Schedule 1 but not including any other Schedules or Statement of Work. |
| **Central Government Body** | 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: Government Department; Non- Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Supplier. |
| **Change of Control** | Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988. |
| **Customer Affiliates** | Any organisation associated with the Customer that will directly receive the benefit of the Project. Customer Affiliates must be named in a Statement of Work, or subsequently notified to the Supplier. |
| **Customer Project Specification** | The document containing the Customer’s requirements issued either as part of the Call For Competition Process set out in Section 3 of the DPS Agreement or as set out in a Statement of Work from time to time. |
| **Customer Cause** | A situation where the Customer does not fulfil its obligations in connection with this Contract (including its payment obligations), and as a consequence the Supplier is prevented from performing any of the agreed Project. |
| **Customer Confidential Information** | All Customer Data and any information that the Customer or CCS gives to Agencies that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Customer’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers. |
| **Customer Data** | Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Customer’s Confidential Information, supplied to the Supplier by or on behalf of the Customer, or which the Supplier is required to generate, process, store or transmit in connection this Contract, and any Personal Data for which the Customer is the Data Controller. |
| **Customer Materials** | Any Customer Data, Customer equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Customer which are provided to the Supplier or its Associates by or on behalf of the Customer. |
| **Contracting Body** | CCS, the Customer and any other bodies listed in the OJEU Notice. |
| **Contract Charges** | All charges payable by the Customer for the Project provided under this Contract calculated in accordance with DPS Schedule 3 (Charging Structure) and the Letter of Appointment including all Approved costs properly incurred by the Customer including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees. |
| **Confidential Information** | The Customers Confidential Information and/or the Supplier Confidential Information. |
| **Contractor Personnel** | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement. |
| **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** | The meaning given in the GDPR. |
| **Contract Year** | A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof. |
| **Data Loss Event** | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
| **DPA 2018** | Data Protection Act 2018 |
| **Data Protection Impact Assessment**  | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **Data Subject Access Request** | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| **Data Protection Legislation or DPA** | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy; |
| **Default** | Any breach of the obligations of the Supplier (including but not limited failing to provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer.  |
| **Deliverables** | The applied research services from Section 2 of the DPS Agreement that are to be provided as specified in a Statement of Work. |
| **Dispute** | Any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Project, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure. |
| **Dispute Resolution Procedure** | The dispute resolution procedure set out in Contract Schedule 4 (Dispute Resolution Procedure). |
| **DPS Agreement**  | The DPS Agreement between CCS and the Supplier reference number: RM6018 referred to in the Letter of Appointment |
| **DPS** | Means the dynamic purchasing system established by CCS for the provision of Research Services which are to be provided by the Supplier under the DPS Agreement. |
| **Effective Date** | The date this Contract starts, as set out in the Letter of Appointment. |
| **Environmental Information Regulations or EIRs** | The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department. |
| **Expenses** | Reasonable travelling, hotel, subsistence and other expenses incurred by the Supplier in connection with the supply Services of and Deliverables, provided that such Expenses have either received the Customers Approval or are in accordance with any expenses policies which have been supplied to the Supplier and set out in the agreed Statement of Work. |
| **Expiry Date** | The date this Contract ends, as set out in the Letter of Appointment. |
| **Extension Expiry Date** | The latest date this Contract can end, as set out in the Letter of Appointment. |
| **FOIA** | The Freedom of Information Act 2000 as amended from time to time 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. |
| **Force Majeure** | Means:• acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare• fire, flood, any disaster and any failure or shortage of power or fuel• an industrial dispute affecting a third party for which a substitute third party is not reasonably available but does not mean:* any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier’s (or a subcontractor’s) supply chain
* any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned, and

any failure of delay caused by a lack of funds |
| **Further Competition Procedure** | The process of a Customer issuing a Project Specification and the Supplier submitting a proposal in response to such Project Specification, as set out in DPS Clause 3.10. |
| **GDPR** | Means the General Data Protection Regulation *(Regulation (EU) 2016/679)* |
| **Good Industry Practice** | Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector. |
| **Guarantee** | A deed of guarantee that may be required under this Contract in favour of the Customer in the form set out in DPS Schedule 9 (Guarantee) granted pursuant to Clause 3 (Contract Guarantee). |
| **Guarantor** | The person, in the event that a Guarantee is required under this Contract, acceptable to the Customer to give a Guarantee. |
| **Impact Assessment** | The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4. |
| **Information** | The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time |
| **Insolvency Event** | Means, in respect of the Supplier [or DPS Guarantor (as applicable)]:1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or
2. a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
8. where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or
9. any event analogous to these listed in this definition occurs under the law of any other jurisdiction
 |
| **Intellectual Property Rights or IPR** | The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:* any patents or patent applications
* any trade marks (whether or not registered)
* inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration
* copyright or design rights (whether registered or unregistered)
* database rights
* performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world
* any goodwill in any trade or service name, trading style or get-up and
* any and all other intellectual or proprietary rights
 |
| **Key Individuals** | Individuals named by the Supplier in the Letter or Appointment or Statement of Work as having a major responsibility for delivering the Project. |
| **Law** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply; |
| **LCIA** |  means London Court of International Arbitration |
| **LED** |  means Law Enforcement Directive (Directive (EU) 2016/680) |
| **Letter of Appointment** | The Letter of Appointment, substantially in the form set out in DPS Schedule 4, signed by both Parties and dated on the Effective Date. |
| **Losses** | Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.2. |
| **Malicious Software** | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **Materials** | Any questionnaires, discussion guides, transcripts, tables, data files, reports, pre-notifications, stimulus materials or any other material protected by Intellectual Property Rights or produced as part of a Project. |
| **Moral Rights** | All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world. |
| **New Expiry Date** | Has the meaning given to it in Clause 2.3 |
| **Party** | Means a Party to this Agreement. |
| **Personal Data** | Personal Data has the same meaning as set out in the Data Protection Act 2018 |
| **Prohibited Act** | To directly or indirectly offer, promise or give any person working for or engaged by a Customer or CCS a financial or other advantage to:1. induce that person to perform improperly a relevant function or activity
2. reward that person for improper performance of a relevant function or activity
3. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
4. commit any offence:
	* under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
	* under legislation or common law concerning fraudulent acts; or
	* defrauding, attempting to defraud or conspiring to defraud the Customer ; or
	* any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;
 |
| **Project** | Any project(s) agreed between the Parties from time to time whereby the Supplier performs the Project which are the subject of this Contract and supplies Deliverables to the Customer as more fully described in the applicable Statement of Work; |
| **Project Commencement Date** | The date a Project will start, as set out in the relevant Statement of Work. |
| **Project Completion Date** | The date by which a Project is to be completed, as set out in the relevant Statement of Work. |
| **Project Notice Period** | The period of notice for cancellation of a Project as set out in the Statement of Work. |
| **Project Specific Materials** | Means:Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/orIntellectual Property Rights in or arising as a result of the performance of the Supplier’s obligations under this Contract and all updates and amendments to the same. |
| **Project Term** | The period during which the Project for each Project will be provided as specified in the applicable Statement of Work. |
| **Protective Measures** | means appropriate technical and organisational measures which may include: 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 such measures adopted by it. |
| **Purchase Order Number** | The order number set out in the Letter of Appointment. |
| **Records** | The accounts and information maintained by the Supplier related to the operation and delivery of this Contract, including all expenditure which is reimbursable by the Customer, as are necessary for the provision of management information and to enable the Customer to conduct an audit as set out in Clause 21. |
| **Rectification Plan** | The rectification plan pursuant to the Rectification Plan Process. |
| **Rectification Plan Process** | The process set out in Clauses 5.8 to 5.14. |
| **Regulations** | The Public Contracts Regulations 2015. |
| **Relevant Requirements** | All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **Request for****Information** | A request for information or an apparent request relating to this Contract or the provision of the Project or an apparent request for such information under the FOIA or the EIRs. |
| **Schedule** | Any Schedule attached to this Contract. |
| **Services** | The Project to be supplied by the Supplier under this Contract and in accordance with Section 2 of the DPS Agreement, as set out in the relevant Statement of Work. This includes the provision of Deliverables. |
| **Special Terms** | Any terms specifically designated as varying these Contract Terms or the terms of any schedule, as set out in the applicable Statement of Work. |
| **Standards** | Any: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; • standards detailed in the specification in DPS Section 2 (Services and Key Performance Indicators):• standards detailed by the Customer in the Letter of Appointment and any Statement of Work or agreed between the Parties from time to time;• relevant Government codes of practice and guidance applicable from time to time i.e. including but not limited to Market Research Society (MRS) Code of Conduct and Social Research Association (SRA). |
| **Statement of Work** | One or more documents describing the relevant Project(s) as agreed and signed by the parties and which shall comprise both the Customer Project Specification and the Supplier’s Proposal (whether agreed as part of a Call for Competition or during the Term of this Contract). |
| **Sub-Contract** | A contract entered into between the Supplier and a Sub- Contractor. |
| **Sub-Contractor** | Any person or Supplier appointed by the Supplier to provide elements of the Project on behalf of the Supplier to the Customer. |
| **Sub-Processor** | Means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement  |
| **Supplier Affiliate** | Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Supplier, including as a subsidiary, parent or holding company. |
| **Supplier Confidential Information** | Any information that the Supplier gives to CCS or to Customer’s that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however it is conveyed, that relates to the Supplier’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all Intellectual Property Rights. |
| **Supplier Materials** | Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Supplier for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Customer Materials). |
| **Supplier Proprietary Materials** | Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Supplier and which:- were in existence prior to the date on which it is intended to use them for a Project, orare created by or for the Supplier outside of a Project and which are intended to be reused across its business |
| **Supplier Proposal** | The Supplier’s solution in response to the Customer’s Project Specification, as set out in the Letter of Appointment or in any Statement of Work. |
| **Tender** | The tender submitted by the Supplier in response to the Invitation to Tender. |
| **Term** | The period from the Effective Date to the earlier of:* the Expiry Date or New Expiry Date; and
* any date of termination
 |
| **Territory** | The United Kingdom, unless specified otherwise in the applicable Statement of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide. |
| **Third Party Materials** | Any Materials used in the Deliverables which are either commissioned by the Supplier from third parties or which have already been created by a third party and the Supplier proposes to use. Excludes software which is owned or licensed by a third party. |
| **Transparency Principles** | The principles set out at [www.gov.uk/government/publications/transparency-of-suppliers-](http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public)  [and-government-to-the-public](http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public) detailing the requirement for the proactive release of contract information under the Government’s transparency commitment. |
| **Transparency Reports** | The information relating to the Project and performance of this Contract which the Supplier is required to provide to the CCS in accordance with its reporting requirements. |
| **Variation** | A change in this Contract that is formally agreed by both Parties, as detailed in Clause 10.2. |
| **Variation Form** | The template form to process and record variations to this Contract as set out at Schedule 5. |
| **Worker** | Any Supplier personnel to whom the Customer considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) appliesSee [https://www.gov.uk/government/publications/procurement-](https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees)  [policy-note-0815-tax-arrangements-of-appointees](https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) |
| **Working Day** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |

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| **SCHEDULE 2****Statement of Work- Not Applicable** |
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**SCHEDULE 3: STAFF TRANSFER**

**Not Used**

**SCHEDULE 4:**

**DISPUTE RESOLUTION PROCEDURE**

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Contract or any Project, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify CCS of the details of the Dispute and escalate the dispute to the Customer Representative, the Supplier Representative and CCS who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Customer considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
	* appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
	* meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non- binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Customer considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
	* the arbitration will be governed by the provisions of the Arbitration Act 1996

deemed to be incorporated into this Contract. It however there is any conflict between the LCIA procedural rules and this Contract, this Contract will prevail

* the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
* the tribunal shall consist of a sole arbitrator to be agreed by the Parties
	+ if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
	+ the arbitration proceedings shall take place in a location to be agreed between the Parties.

No of Letter of Appointment being varied:

…………………………………………………………………… Variation Form No:

…………………………………………………………………………………… BETWEEN:

**[**insert name of Customer **]** ("**the Customer "**) and

**[**insert name of Supplier**]** (**"the Supplier"**)

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

## [Insert details of the Variation]

1. Words and expressions in this Variation shall have the meanings given to them in this Contract.
2. This 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 Customer 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 6: CONTRACT CHARGES**

1. **General provisions**
	1. This Contract Schedule 6 details:
		1. the Contract Charges for the Project under this Contract ; and
		2. the procedure applicable to any adjustments of the Contract Charges.
2. **Contract Charges**
	1. The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Contract Schedule 6.
	2. The Supplier acknowledges and agrees that:
		1. in accordance with paragraph 1 (General Provisions) and of this Contract Schedule 6 (Contract Charges), the Contract Charges can in no event exceed the Contract Charges set out in Annex 1 to Contract Schedule 6 (Contract Charges); and
		2. The Contract Charges comprise of the maximum daily rates for each category of the Supplier staff and (in each case exclusive of VAT) are as set out in Annex 1 of this Contract Schedule 6.
		3. Daily rates are based on a Working Day consisting of eight (8) hours (excluding break).
		4. Unless a Customer agrees otherwise under the terms of a specific Contract, the Supplier cannot charge for any more than eight (8) working hours in one (1) day.
		5. All daily rates are inclusive of travel, subsistence, lodging and related expenses. Any additional Charges shall be calculated as detailed in the Letter of Appointment as detailed in DPS Schedule 4 (Letter of Appointment) and agreed with the Customer. The Supplier shall provide invoices detailing additional Charges to the Customer.
3. **Adjustment of Contract Charges**
	1. The Contract Charges shall only be varied:
		1. due to a specific change in Law in relation to which the Parties agrees that a change is required to all of part of the Contract Charges in accordance with Clause 11.4 of the DPS Agreement, or
		2. where a review of the Contract Charges is agreed by the Parties, in accordance with the provisions of Section 4 of this Contract Schedule 6.
4. **Review of the Contract Charges**
	1. If the Supplier determines that some or all of the Contract Charges need to be increased, the Supplier shall notify the Customer in writing of its request to increase some or all of the Contract Charges. It must provide the Customer with a list of the Contract Charges it wishes to vary together with written evidence of the justification for the requested increase. This should include:
		1. a breakdown of the profit and cost components that comprise the relevant rate
		2. details of the movement in the different identified cost components of the relevant rate
		3. reasons for the movement in the different identified cost components of the relevant rate
		4. evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components, and
		5. the date on which the Supplier wants the Variation to come into force
	2. The Customer may in its absolute discretion, grant or refuse the Supplier’s request (in whole or in part).
5. **Implementation of adjusted Contract Charges**

5.1 Variations to the Contract Charges will take effect on a date determined by the Customer.

5.2 Variations do not affect the Charges payable to a Customer under a Contract which had already been agreed before the variation takes effect.

5.3 Any variation to the Charges payable under a Contract must be agreed in writing between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Contract.

**6 E-commerce transactions with central government bodies**

6.1 The Supplier accepts e-commerce as the preferred transacting model for all Government’s purchasing transactions. REDACTED

**ANNEX 1 – CONTRACT CHARGES**

Table A: Firm Price for Online Focus Groups and Online Polling

REDACTED

Table B: Focus Group Costs – Physical Locations/Environments Option – Information Only

REDACTED

Table C: Rate Card

REDACTED

**SCHEDULE 7: PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

REDACTED

**SCHEDULE 8: ADDITIONAL CLAUSES**

**Confidentiality Agreement**

This confidentiality agreement is made Wednesday 8th January 2021 between:

* Her Majesty’s Treasury (the “**Customer**”), whose offices are located at REDACTED on behalf of itself and on behalf of the Charterers, and ;
* Hanbury Strategy and Communications Limited (a Supplier registered in ***England and Wales*** under Company Number 10361418 (the **“Supplier”**) whose main or registered office is at REDACTED
* and is effective permanently.
1. together the **“Parties”**

**BACKGROUND:**

1. Each Party wishes to receive Confidential Information from the other for the purpose of carrying out qualitative focus groups and quantitative online polling on a weekly basis for a 12 month period(the “**Permitted Purpose**”).

**IT IS AGREED:**

1. **INTERPRETATION**
	1. In this Agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| **“Confidential Information”** | 1. means:

Information, including all personal data within the meaning of the Data Protection Act provided by the Authority pursuant to or in anticipation of this Agreement and/or in connection with the Permitted Purpose that relates to:(i) the Disclosing Party;(ii) the Disclosing Party’s Group; or(iii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party or the Disclosing Party’s Group;other Information: (i) provided by the Disclosing Party or the Disclosing Party’s Group to the Receiving Party pursuant to or in anticipation of this Agreement and/or in connection with the Permitted Purpose (whether before or after the date of this Agreement) or (ii) that ought reasonably to be considered to be confidential which comes (or has come) to the Receiving Party’s attention or into the Receiving Party’s possession in connection with the Permitted Purpose; discussions, negotiations, and correspondence between the Disclosing Party or the Disclosing Party’s Group and/or any of its directors, officers, employees, consultants or professional advisers and the Receiving Party and/or any of their employees, consultants and/or professional advisers in connection with the Permitted Purpose and all matters arising therefrom; andInformation or analysis derived from any of the above,1. but not including any Information that:
	* + 1. was in the possession of the Receiving Party without obligation of confidentiality prior to its disclosure by the Disclosing Party or the Disclosing Party’s Group;
			2. the Receiving Party obtained on a non-confidential basis from a third party who is not, to the Receiving Party’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or any member of the Disclosing Party’s Group or otherwise prohibited from disclosing the information to the Receiving Party;
			3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
			4. the Receiving Party evidences to the reasonable satisfaction of the Authority was independently developed without access to the Confidential Information;
 |
| **“Data Protection Act”** | means the Data Protection Act 2018 and the General Data Protection Regulations (EU) 2016/679 (together with any Act of Parliament which implements EU data protection legislation into domestic law) as amended, updated or replaced from time to time; |
| **“Disclosing Party”** | means a Party that directly or indirectly discloses or makes available Confidential Information; |
| **“Disclosing Party’s Group”** | 1. means, where the Disclosing Party’s Group is:
2. the Organisation, any of its affiliated companies; and
3. the Authority, any Government Body and any affiliate of either;
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|  |  |
|  |  |
| **Environmental Information Regulations** | means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Government Body in relation to these Regulations; |
| **Freedom of Information Act or FOIA** | 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 any relevant Government Body in relation to this Act; |
| **“Government Body”** | means any department, office or agency of the Crown together with its arms length bodies; |
| **“Information”** | means all information of whatever nature, however conveyed and in whatever form, including (but not limited to) in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); |
| **“Information Return Notice”** | has the meaning given to it in Clause 5.1; |
| **“Permitted Purpose”** | has the meaning given to it in the recital to this Agreement; |
| **“Receiving Party”** | means a Party to this Agreement which receives Confidential Information, directly or indirectly from the other Party; |
| **“Representatives”**  | means employees, officers, agents, and/or advisers of the Authority or the Organisation; |
| **“Specified Scope”** | has the meaning given to it in Clause 5.1; and |
| **“Working Day”** | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.  |

* 1. In this Agreement:
		1. a reference to any gender includes a reference to other genders;
		2. the singular includes the plural and vice versa;
		3. the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
		4. references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
		5. the expressions "subsidiary", "holding company" and "subsidiary undertaking" shall have the meanings given to them in the Companies Act 2006;
		6. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
		7. references to Clauses are to clauses of this Agreement.
1. **Confidentiality obligations**
	1. In consideration of the benefits to the Parties of the disclosure of the Confidential Information, each Party wishes to disclose Confidential Information to the other solely for the Permitted Purpose upon the mutual obligations of confidentiality and such other terms and stipulations, as are set out in this Agreement.
	2. A Receiving Party shall:
		1. treat all Confidential Information as secret and confidential;
		2. have in place and maintain proper security measures and procedures which shall be at least as stringent as the measures and procedures it applies to its own confidential and proprietary information to protect the confidentiality of the Confidential Information (having regard to its form and nature);
		3. not disclose or permit the disclosure of, nor otherwise make available, any of the Confidential Information in whole or in part to any other person without obtaining prior written consent from the Disclosing Party (which the Disclosing Party shall have the express right to grant or deny) or except as expressly set out in this Agreement;
		4. not transfer any of the Confidential Information outside the United Kingdom;
		5. not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
		6. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Permitted Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party;
		7. keep a written record of any document or other Confidential Information received from the other in tangible form, and of any copy made of the Confidential Information, and make the same available to the Disclosing Party promptly upon request; and
		8. immediately notify the Disclosing Party in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information.
2. **Permitted Disclosures**
	1. The Receiving Party shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Receiving Party.
	2. the Receiving Party may only disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know the Confidential Information for the Permitted Purpose, provided that:
		1. it informs these Representatives of the confidential nature of the Confidential Information before disclosure and obtains from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this agreement are upon the parties; and
		2. at all times, it is responsible and liable for these Representatives' compliance with the obligations set out in this agreement.
	3. Before making a disclosure pursuant to Clause 3.1 (or Clause 3.2 in the case of the Authority), the Receiving Party shall at the earliest opportunity and, to the extent that is legally permitted to do so:
		1. notify the Disclosing Party in writing of the proposed disclosure; and
		2. ask the court or other public body to treat the Confidential Information as confidential.
	4. Where notice of disclosure under 3:
		1. is legally permitted, the Receiving Party shall take into account the reasonable requests of the Disclosing Party in relation to the proposed disclosure; or
		2. is prohibited, the Receiving Party shall notify the Disclosing Party of the disclosure as soon as possible following the disclosure when it is legally able to do so.
3. **Authority rights and obligations**
	1. The Organisation acknowledges and agrees that:
		1. the Authority may be subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2006 and shall assist and cooperate with the Authority to enable the Authority to comply with any Information disclosure obligations;
		2. the Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Confidential Information or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
		3. in no event shall the Organisation respond directly to a Request for Information unless expressly authorised to do so by the Authority;
		4. The Organisation acknowledges that the Authority may, acting in accordance with the Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose the Confidential Information
			1. in certain circumstances without consulting the Organisation; or
			2. following consultation with the Organisation and having taken its views into account;

provided always that where this Clause 4.1.4 (Authority rights and obligations) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Organisation advance notice, or failing that, to draw the disclosure to the Organisation's attention after any such disclosure; and

* + 1. the Authority may disclose any of the Confidential Information to another Government Body provided that the Authority informs the recipient Government Body of the confidential nature of the Confidential Information.
1. **Return of Information and surviving obligations**
	1. The Disclosing Party may serve a notice (an “**Information Return Notice**”) on the Receiving Party at any time under this Clause 5.1. An Information Return Notice must specify whether it relates to (i) all Confidential Information provided by the Disclosing Party which is protected by this Agreement or (ii) only specified Information or categories of Confidential Information so protected (in either case, the “**Specified Scope**”). On receipt of an Information Return Notice, the Receiving Party shall:
		1. at the Disclosing Party’s option, securely destroy or return and provide to the Disclosing Party documents and other tangible materials that contain any of the Confidential Information within the Specified Scope, including in any case all copies of the relevant documents and other materials made by the Receiving Party;
		2. ensure, so far as reasonably practicable, that all Confidential Information within the Specified Scope that is 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 containing such Confidential Information; and
		3. make no further use of any Confidential Information which falls within the Specified Scope.
	2. Following any destruction or return of Confidential Information to the Disclosing Party pursuant to Clause 5.1, the Receiving Party’s remaining obligations under this Agreement (including in relation to any Confidential Information which falls outside the Specified Scope) shall otherwise continue in force until such time as the Confidential Information ceases to be confidential.
2. **ASSIGNMENT AND NOVATION**
	1. Subject to Clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
	2. The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
		1. any Government Body; or
		2. to a body other than a Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
		3. the Organisation shall, at the Authority’s request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 6.
	3. A change in the legal status of the Authority such that it ceases to be a Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
3. **General**
	1. All Confidential Information shall remain the property of the Disclosing Party. Each Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a Party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.
	2. The Organisation warrants that all the information it submits to the Authority in respect of this Agreement and/or otherwise pursuant to the Permitted Purpose:
		1. is and shall remain at all relevant times true, accurate and not misleading;
		2. has been verified as being true, accurate and not misleading by the Organisation; and
		3. the Organisation acknowledges and further warrants that, in the event that the Authority awards a contract to the Organisation further to this any ITT process connected to the Purpose and/or otherwise pursuant to the Purpose, the Authority may rely upon such information submitted to it and on the warranties provided under Clause [7.2] in entering into such contract.
	3. Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Receiving Party and to authorise the Receiving Party to use such Confidential Information for the Purpose.
	4. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
		1. to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
		2. to require the Authority to disclose, continue disclosing or update any Confidential Information; or
		3. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
	5. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
	6. Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by a Receiving Party of the provisions of this Agreement. Accordingly, each Party acknowledges that the Authority shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
	7. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
	8. Each Party will be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
4. **THIRD PARTY RIGHTS**
	1. Save for Clauses 4.1 and 6.2 a person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
5. **NOTICES**
	1. Any notices sent under this Agreement must be in writing.
	2. The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| **Manner of Delivery** | **Deemed time of service**  | **Proof of service** |
| Email  | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.  |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day. | Properly addressed and delivered as evidenced by signature of a delivery receipt  |
| Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery. | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

* 1. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

|  |  |  |
| --- | --- | --- |
|  | **Organisation** | **Authority** |
| **Contact** | Hanbury Strategy and Communications Limited | REDACTED |
| **Address** | REDACTED | REDACTED |
| **Email** | REDACTED | REDACTED |

* 1. This Clause 10 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.
1. **WAIVER AND CUMULATIVE REMEDIES**
	1. The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
	2. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.
2. **GOVERNING LAW AND JURISDICTION**
	1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
	2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
	3. The Organisation appoints Hanbury Strategy and Communications Limited either at its registered office to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Authority in respect of this Agreement. The Organisation consents to the service of notices and demands, service of process or any other legal summons served in such way.

Signed by the Authority

 Name: REDACTED

Signature: REDACTED

Position in Authority: REDACTED

Signed by the Organisation

 Name: REDACTED

Signature: REDACTED

Position in Organisation: REDACTED