

**RM6292 Cloud Compute  
Annex 5 to Framework Schedule 4**

## **Template Order Form, Lot 3 – Professional Services**

1. This Order Form is issued in accordance with the provisions of the Cloud Compute 2 Framework Agreement RM6262 dated 17<sup>th</sup> November 2023 between the Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Agreement**") and should be used by Buyers after conducting a further competition or a direct award under the Framework Agreement.
2. The Contract, referred to throughout this Order Form, means the contract (entered into pursuant to the terms of the Framework Agreement) between the Supplier and the Buyer (as defined below) consisting of this Order Form and the Professional Services Call-Off Terms set out in Annex 1 (and which are substantially the terms set out in Annex 5 to Schedule 4 to the Framework Agreement) and copies of which are available from the Crown Commercial Service website <https://www.crowncommercial.gov.uk>,
3. The Supplier shall provide the Services specified and/or referred to in this Order Form (including any attachments to this Order Form) to the Buyer and the Buyer Users on and subject to the terms of the Contract for the duration of the Contract Period. The Contract shall take effect on the Commencement Date (as defined below) and shall expire at the end of the Contract Period.
4. In this Order Form, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Professional Services Call-Off Terms.
5. This Order Form shall comprise:
  - (a) This document headed "Order Form";
  - (b) Attachment 1 – Charges and Payment Profile;
  - (c) Attachment 2 – Schedule of Standards;
  - (d) Attachment 3 – Schedule of Processing, Personal Data and Data Subjects;
  - (e) Attachment 4 – Alternative Clauses;
  - (f) Attachment 5 – List of Transparency Reports; and
  - (g) Annex 1 – Professional Services Call-Off Terms.
6. The Order of Precedence shall be as set out in Clause 2.2 of the Professional Services Call-Off Terms being:
  - (a) subject always to Clauses 2.4 and 4.2.2 of the Call-Off Terms, the Special Terms (if any);
  - (b) this Order Form (except Special Terms (as defined in the Professional Services Call-Off Terms));
  - (c) the Professional Services Call-Off Terms;
  - (d) the applicable provisions of the Framework Agreement, except (and subject always to Clause 2.4 and 4.2.2 of the Professional Services Call-Off Terms) Schedule 13 (Tender) of the Framework Agreement; and
  - (e) Schedule 13 (Tender) of the Framework Agreement.
7. Where Schedule 13 (Tender) of the Framework Agreement contains provisions which are more favourable to the Buyer in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Buyer shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.
8. Special Terms shall only apply to this Contract if they:
  - (a) are set out in full in the section of this Order Form entitled "Special Terms"; and

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(b) augment and supplement this Contract and in particular do not amend the Call-Off Terms to any material extent,

and provided always that any attempt to incorporate by reference any Supplier Terms as Special Terms in this Contract shall be ineffective.

9. Alternative Clauses specified in this Order Form will take precedence over their corresponding clauses in this Contract.

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## Section A - General information:

### Contract Details

**Contract Reference:**

CEFAS24-164

**Contract Title:**

Hitachi Analytics - POC

**Contract Description:**

This contract is to support Cefas' "Seascope" vision by promoting data-driven decision-making and self-service analytics through the implementation of Microsoft Fabric and Azure Purview.

**Commencement Date:** this should be the date of the last signature on Section D of this Order Form

On signature by both parties of this order form – see Section D.

### Buyer details

**Buyer organisation name:**

Centre for Environment, Fisheries and Aquaculture Science ("CEFAS")

**Billing address:**

Your organisation's billing address - please ensure you include a postcode.  
Cefas, Pakefield Road, Lowestoft, Suffolk, NR33 0HT

**Buyer Authorised Representative name:**

The name of the person authorised to manage this Contract for the Buyer.

[REDACTED]

**Buyer Authorised Representative contact details:**

Email and telephone contact details for the Buyer's representative

[REDACTED]

### Supplier details

**Supplier name:**

The Supplier's legal entity name, as it appears in the Framework Agreement.  
Hitachi Solutions Europe Ltd

**Supplier address:**

Supplier's registered office address.  
110 Bishopsgate, 23rd Floor, London, EC2N 4AY

**Supplier authorised representative name:**

The name of the person authorised to manage this Contract for the Supplier.

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Simon Robinson

**Supplier authorised representative contact details:**

Email and telephone contact details of the Supplier' authorised representative.

[REDACTED]

**Order reference number:**

A unique number provided by the Supplier at the time of quote.

N/A

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|--|----------------|
| <b>Key Sub-Contractors and Sub-processors:</b> | Not Applicable |
|--|----------------|

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## Section B - The Services Requirement:

**Commencement Date:**

As per Section A above.

**Initial Term:**

3 Months

**Extension Period:**

Not applicable

**Special Security or compliance requirements:**

Include any security, conformance or compliance requirements with which the Services must comply with.

Supplier staff to be SC Cleared before commencement of work.

**Special Terms:**

Insert any specific contractual provisions below which are hereby incorporated into the Contract. Should the Buyer be eligible for a Government Discount according the Supplier's eligibility criteria and wish to activate the Government Discount, it should indicate this here and the following variations would then be treated as amending the Order Form and Professional Services Call-Off Terms:

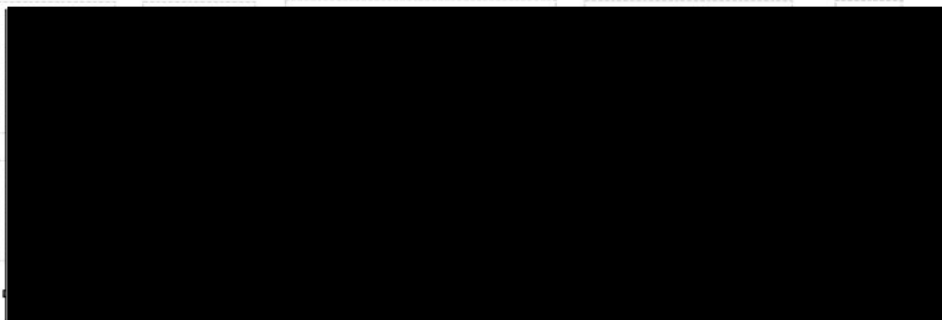
N/A

**Services:**

This Order Form is for the Services set out or referred to below. It is acknowledged by the Parties that the volume of the Services consumed by the Buyer and/or Buyer Users may vary during the Contract as provided for below.

Please provide details of all Services required to be in scope of the Contract with appropriate references, where available, from the Catalogue as defined in Schedule 1 (Definitions) of the Framework Agreement.

| Professional Services Terms required: | Definitions  |   |
|---------------------------------------|--|---|
|                                       | The following Definitions are in addition to those within Professional Services Call Off Terms Schedule 1: |   |
|                                       | Agile  | The project management iterative methodology used by the Supplier to deliver the Services using Sprints, where the solution will evolve over time based on a collaborative approach between the parties, and where the Buyer's Product Owner will be responsible for prioritising available resources to best meet the required outcomes. |

|  |                             |  |
|--|-----------------------------|--|
|  | Delivery Manager            | Accountable for all aspects of delivery and governance within their product area of responsibility.  |
|  | Proof of Concept (POC)      | A short engagement used to assess the feasibility of some aspect(s) of a solution. The POC is not designed for production use in a live environment.     |
|  | Product Owner               | Buyer resource responsible for prioritising User Stories to best meet the Buyer's outcomes within the available time.                                    |
|  | Seascope                    | The Buyer's vision for data-driven decision making which the Services in this Order Form relates to.   |
|  | Sprint                      | A repeatable fixed time-box, during which activities are completed, as prioritised by the Supplier Product Owner.  |
|  | Subject Matter Expert (SME) | A Buyer team member who is able to provide specific domain knowledge pertaining to the Buyer's business, processes and/or challenges to the project team |
|  | User Story                  | Definition of requirements for use during a Sprint.  |
| <p><b>Overview of Requirement</b></p> <p>The project shall support Seascope by promoting data-driven decision-making and self-service analytics through the implementation of Microsoft Fabric and Azure Purview, enhancing data processing and governance. Key deliverables include a secure instance, processed datasets, self-service analytics use cases, and a series of presentations to key stakeholders.</p>  <p>The Services will be delivered using an architecture based on Microsoft Fabric &amp; Purview to make data available for reporting, analysis, and data science through a centralised analytical data model, serving as a single conformed version of the</p> |                             |  |

truth. The proposed architecture also seeks to offer maximum opportunities to optimise the solution performance, scalability, and cost.

The Supplier will deliver a POC from 06/01/2025 to 28/03/2025 and will be governed by the Buyer/Supplier. The project will be run as a Proof Of Concept (POC), so will utilising only one environment. The creation of a production release process, with multiple environments is outside the scope of this initial POC.

Software Scope

The Supplier shall provide the services and Deliverables in relation to the software products listed in the table below.

| Software                      | Comments  | Vendor    |
|-------------------------------|---|-----------|
| Microsoft Fabric              | Used as the primary cloud service for the solution, for data analysis, data engineering and data science.                                       | Microsoft |
| Microsoft Purview             | Used in conjunction with Microsoft Fabric to govern data assets and products in Microsoft Fabric.   | Microsoft |
| Azure Machine Learning        | Used in conjunction with Microsoft Fabric to deploy and manage machine learning models and operations, enhancing the data science capabilities. | Microsoft |
| Azure DevOps                  | Developer services including source control, work planning and collaboration tools.   | Microsoft |
| Azure Data Lake Storage Gen 2 | Used as a low-cost data storage area for source data before it is transformed and presented for analysis.                                       | Microsoft |
| Azure SQL Database            | Used to host the Buyer's data, to be ingested into the Fabric data platform.  | Microsoft |

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**Environment Scope**

There are no additional software provisioning or configuration tasks, which require any technical infrastructure or environment to be established by the Supplier for the Buyer within the scope of this Order Form.

The Supplier shall advise the Buyer of the environments required and the duration and sizing. The Buyer shall ensure that it shall obtain all licences for the environments, which are required for the Services.

**Location Scope**

| Organisation | Site Address  |
|--------------|---|
| Supplier     | Hitachi Solutions Europe Ltd.<br>110 Bishopsgate - Tower 42<br>23rd Floor<br>London, EC2N 4AY |
| Buyer        | CEFAS<br>The Nothe<br>Barrack Road<br>Weymouth<br>Dorset<br>DT4 8UB                           |

The work locations will be at the Buyer and the Supplier offices as shown in the table above.

**Integration Scope**

There are no integration points in scope of the Services.

**Business Change Management Scope**

There are no business change management activities within the scope of the Services.

**Data Migration Scope**

There are no data migration activities with the scope of the Services.

**Out of Scope**

The following items are not in scope for the Supplier under this Order Form:

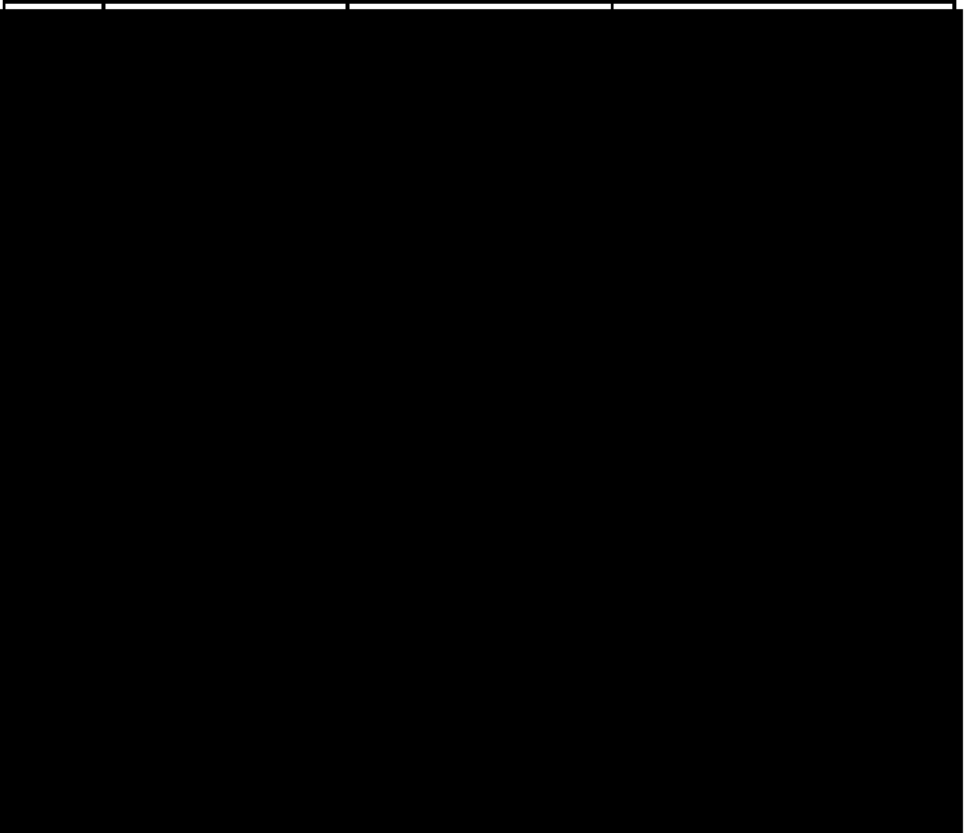

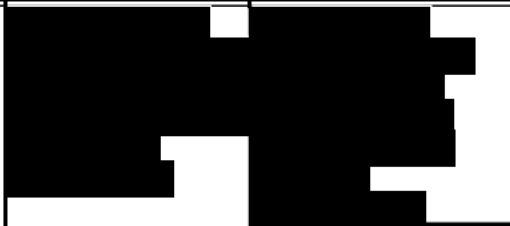
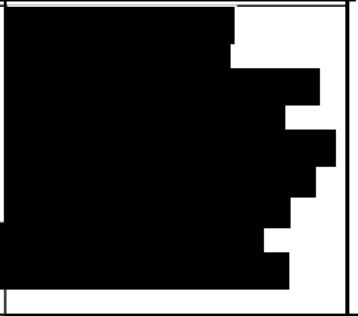
- Management, allocation, and supervision of any Buyer resources.
- Deployment of solution to higher environments.
- User Acceptance Testing (UAT) of solution.
- Any item or activity not specifically listed as a Deliverable or in scope activity.

**Buyer's Responsibilities**

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|  | <p>The Buyer shall, and (where applicable) shall procure that its employees, officers, agents, and contractors shall, on a timely basis:</p> <ul style="list-style-type: none"> <li>▪ assist and co-operate with the Supplier and its personnel as reasonably necessary or requested.</li> <li>▪ provide sufficient and suitably qualified staff (including Subject Matter Experts (SME's)) to enable the Supplier to fulfil its responsibilities and obligations under this Order Form.</li> <li>▪ make appropriate staff available to the Supplier</li> <li>▪ provide reasonable access to its IT systems.</li> <li>▪ provide such documentation, data and other information (under the Buyer's control and which it is able to provide) required for the performance of the services under this Order Form.</li> <li>▪ promptly approve documents so as not to cause delay to the Supplier in the performance of the services under this Order Form.</li> <li>▪ be responsible for the installation or configuration of any software, hardware, or network infrastructure other than the Data &amp; Analytics solution.</li> <li>▪ identify and provision any third-party software licence requirements (including, for the avoidance of doubt, Power BI) necessary for the delivery of the Services.</li> <li>▪ Provision of data sources either via the storage account or in the Azure SQL DB already put in place by the Buyer.</li> <li>▪ Provision and configuration of Azure Active directory tenant to be used as the basis of authentication.</li> </ul> |  |  |  |  |  |  |  |  |  |  |
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|  | <p>The Buyer shall, and (where applicable) shall procure that its employees, officers, agents, and contractors shall, on a timely basis:</p> <ul style="list-style-type: none"> <li>▪ assist and co-operate with the Supplier and its personnel as reasonably necessary or requested.</li> <li>▪ provide sufficient and suitably qualified staff (including Subject Matter Experts (SME's)) to enable the Supplier to fulfil its responsibilities and obligations under this Order Form.</li> <li>▪ make appropriate staff available to the Supplier</li> <li>▪ provide reasonable access to its IT systems.</li> <li>▪ provide such documentation, data and other information (under the Buyer's control and which it is able to provide) required for the performance of the services under this Order Form.</li> <li>▪ promptly approve documents so as not to cause delay to the Supplier in the performance of the services under this Order Form.</li> <li>▪ be responsible for the installation or configuration of any software, hardware, or network infrastructure other than the Data &amp; Analytics solution.</li> <li>▪ identify and provision any third-party software licence requirements (including, for the avoidance of doubt, Power BI) necessary for the delivery of the Services.</li> <li>▪ Provision of data sources either via the storage account or in the Azure SQL DB already put in place by the Buyer.</li> <li>▪ Provision and configuration of Azure Active directory tenant to be used as the basis of authentication.</li> </ul> |  |  |  |  |  |  |  |  |  |  |
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|  | <p><b>Dependencies</b></p> <p>The following dependencies have been made to date:</p> <ul style="list-style-type: none"><li>▪ Supplier is dependent on Buyer's subject matter expertise and access to end users to resolve any gaps between Buyer's identified requirements and those that surface through investigation and analysis by Supplier throughout the duration of this Order Form.</li><li>▪ Supplier is dependent on access to Buyer's relevant systems and tools. Supplier and Buyer will collaborate to identify the systems, tools and level of access required for Supplier to provide the Services detailed within this Order Form.</li><li>▪ Supplier is dependent on the Buyer to provide the necessary data to meet the Deliverables.</li></ul> |  |   |

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| <b>Service Request process (dynamic nature of Services):</b>                                 | Not applicable   |
| <b>Geographical limitations on the location(s) from which the Services will be provided:</b> | <p>It is acknowledged that:</p> <p>(a) the Buyer is responsible for selecting the country and/or more specific geographic region(s) from which the Services are to be provide and/or within which it permits the Supplier to process Buyer Content (including Personal Data); and</p> <p>(b) the Supplier is responsible for ensuring that the Services are only provided and/or Buyer Content is only located within the country(ries) and/or more specific geographic region(s) instructed by the Buyer from time to time in accordance with this Contract, except as otherwise agreed in writing by the Parties.</p> <p>As at the Commencement Date the Buyer instructs the Supplier that the Services are only delivered from data centres sited in the countries and/or more specific geographical regions listed below:</p> <p><b>Country(ies):</b><br/>United Kingdom</p> <p><b>More specific geographical region(s):</b><br/>Other than the exceptions listed above the Supplier may only:</p> <p>(a) change the countries and/or more specific geographical region(s) from which it provides the Services; and/or</p> <p>(b) move the processing of Buyer Content,</p> <p>in either case to a different country and/or more specific geographical region(s), in accordance with the prior written instructions of the Buyer Authorised Representative which instructions shall be deemed to include where the Buyer (by a person appropriately authorised to do so on behalf of the Buyer) where the Buyer actively requires the Services to be delivered in and/or Buyer Content to be moved to a country and/or more specific geographic region(s) other than the countries and/or more specific geographic region(s) as previously instructed in writing by the Buyer.</p> <p><b>Restricted Country:</b> N/A</p> |
| <b>Standards:</b>  | <p>In addition to complying with Clause 3.2 of the Professional Services Call-Off Terms, including those Standards set out in Attachment 2 (Schedule of Standards) to this Order Form and the Framework Agreement, the additional standards the Supplier is required to comply with under the Contract are:</p> <p>Cyber Essentials Plus</p>   |

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| <b>On-boarding:</b>   | <p>The on-boarding for the Contract is the responsibility of the Buyer except as stated here:</p> <p>SC clearance for Supplier resources in place prior to Commencement Date.</p>  |
| <b>Off-boarding:</b>  | <p>The off-boarding for the Contract is the responsibility of the Buyer except as stated here:</p> <p>The Supplier agrees to disable any user accounts related to this Contract and provide confirmation that any Buyer data held by the Supplier has been deleted/destroyed.</p> <p>The Supplier agrees to provide the Buyer with any documentation related to the contract.</p>                      |
| <b>Force Majeure:</b> | As per Professional Services Call-Off terms  |
| <b>Audit:</b>         | <p>In addition to the audit rights set out in Clause 13 of the Professional Services Call-Off Terms, the following additional audit rights shall apply to the Contract:</p> <p>N/A</p> <p>The Supplier shall not require any Buyer to disapply its audit rights under Clause 13 of the Professional Services Call-Off Terms and this Order Form (if any) as a condition to providing the Services.</p> |

[REDACTED]

[REDACTED]

|            |            |            |            |            |            |            |            |
|------------|------------|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] |            |            |            |            |            |            |
|            | [REDACTED] |            |            |            |            |            |            |
| [REDACTED] | [REDACTED] |            |            |            |            |            |            |
|            | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
|            | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
|            | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
|            | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
|            | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] |            |            |            |            |            |            |            |

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|  | <p>The Supplier Charges will be paid monthly in arrears and the Supplier will be required to submit monthly timesheets, with confirmation of actual days worked to the Buyer's nominated Programme Manager for review and approval.</p>  |
| <b>Currency:</b>                                   | <p>All prices under this Contract shall be quoted exclusively in: Pounds Sterling unless otherwise agreed in writing by the Buyer Authorised Representative.</p> <p>All Charges shall be paid and/or payable exclusively in Pounds Sterling.</p>   |
| <b>Currency and currency conversion mechanism:</b> | Not applicable   |
| <b>Payment method:</b>                             | The payment method for this Contract is BACS.  |
| <b>Payment profile:</b>                            | The payment profile for this Contract is monthly <i>in arrears</i> .   |
| <b>Invoice details and frequency:</b>              | <p>The Supplier will issue an invoice (including any Electronic Invoices) monthly in arrears.</p> <p>Pursuant to Clause 7.4 of the Professional Services Call-Off Terms, the Buyer will pay the Charges to the Supplier within 30 days of receipt of a valid invoice.</p>  |
| <b>Who and where to send invoices to:</b>          | <p>The Supplier will issue Electronic Invoices in accordance with the agreed Payment Profile.</p> <p>All invoices must be sent to:</p> <p>[REDACTED]</p>   |
| <b>Invoice information required:</b>               | <p>Within 10 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>The Supplier shall ensure that each invoice is submitted in a PDF format and contains the following information:</p> <ul style="list-style-type: none"> <li>1.1.1 the date of the invoice;</li> <li>1.1.2 a unique invoice number;</li> <li>1.1.3 the period to which the relevant Charge(s) relate;</li> <li>1.1.4 the correct reference for the Contract</li> <li>1.1.5 a valid Purchase Order Number;</li> <li>1.1.6 the dates between which the Deliverables subject of each of the Charges detailed on the invoice were performed;</li> <li>1.1.7 a description of the Deliverables;</li> </ul> |





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## Section C - Commercially Sensitive information:

### Commercially Sensitive information:

Any information that the Supplier considers sensitive for the duration of an awarded Contract – use specific references to sections within the Supplier's Tender rather than copying the relevant information here.

Order Form - Information Charges – Information on Supplier day rates.

## Section D - Contract award:

The Contract is awarded in accordance with the provisions of the Framework Agreement.

### SIGNATURES

|            |            |
|------------|------------|
| [Redacted] |            |
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |

### For and on behalf of the Buyer:

|            |            |
|------------|------------|
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |
| [Redacted] | [Redacted] |

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## **Attachment 1 –Charges and Payment Profile**

Not Used

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## Attachment 2 – Schedule of Standards

1. The Supplier shall comply with the following Standards to the extent that can be reasonably expected for a non-production, proof of concept project:
  - 1.1. the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/government-security-classifications>;
  - 1.2. guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Protection of Sensitive Information and Assets at <https://www.cpni.gov.uk/protection-sensitive-information-and-assets>;
  - 1.3. the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/collection/risk-management-collection>;
  - 1.4. government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint, available at <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>;
  - 1.5. the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>;
  - 1.6. ISO 27001 Information Security Management standard, and provide the Buyer with the relevant certification, if requested by the Buyer;
  - 1.7. ISO 27017 Information technology — Security techniques — Code of practice for information security controls based on ISO/IEC 27002 for cloud services, and provide the Buyer with the relevant certification, if requested by the Buyer;
  - 1.8. ISO 27018 Information technology — Security techniques — Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors, and provide the Buyer with the relevant certification, if requested by the Buyer;
  - 1.9. BS EN ISO 9001 “Quality Management System” standard or equivalent;
  - 1.10. BS EN ISO 14001 Environmental Management System standard or equivalent; and
  - 1.11. any additional Standards set out or referred to in this Order Form.
2. If a Buyer has requested in this Order Form that the Supplier has a Cyber Essentials Plus certificate, the Supplier must provide the Buyer with a valid Cyber Essentials Plus certificate required for the Services before the Commencement Date. (<https://www.ncsc.gov.uk/cyberessentials/overview>).

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### Attachment 3 – Schedule of Processing, Personal Data and Data Subjects

This Attachment 5 shall be completed by the Buyer, who may take account of the view of the Supplier, however the final decision as to the content of this Attachment 3 shall be with the Buyer at its absolute discretion.

1. The contact details of the Buyer's Data Protection Officer are: [REDACTED]
2. The contact details of the Supplier's Data Protection Officer are: [REDACTED]
3. The Supplier shall comply with any further written instructions with respect to processing by the Buyer.
4. Any such further instructions shall be incorporated into this Attachment 3.

| Description                               | Details  |
|---|--|
| Identity of the Controller and Processor: | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor in accordance with Clause 15 (Protection of Personal Data) of the Professional Services Call-Off Terms.  |
| Subject matter of the processing:         | The processing is needed in order to ensure that the Supplier can effectively deliver the contract to provide a service to the Buyer.  |
| Duration of the processing:               | The Term of this Order Form.   |
| Nature and purposes of the processing:    | <p>To provide Services in respect of this Order Form.</p> <p>The collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data incidental to the design, development and testing of systems in scope for this Order Form.</p>          |
| Type of Personal Data being Processed:    | <p>Personal Data relating to Buyer existing and new business applications and databases accessible by the Supplier in the course of providing the Services under this Order Form.</p> <p>Full name, title, office postal address, email address, work telephone numbers and similar contact data of an individual and their place of work</p> <p>Any Personal Data disclosed by users in their use of the application and/or systems</p> |

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|   | Personal data of Authority employees and staff associated with the use of the Services, the application and any associated systems: name, login ID etc.  |
| <b>Categories of Data Subject:</b>  | <p>End users of the application and/or systems provided to the Buyer; employees and staff of the Buyer; Buyer's contractors and contacts; members of the public; non-related persons connected to the data subjects.</p> <p>Buyer end users, Buyer customers, Buyer suppliers.</p> |
| <b>Plan for return and destruction of the data once the processing is complete:</b><br>(UNLESS requirement under union or member state law to preserve that type of data) | Any Personal Data of Buyer will be returned to Buyer upon request or destroyed (to the extent technically and legally practicable).  |

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## **Attachment 4 – Alternative Clauses**

Not applicable

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## **Attachment 5 – List of Transparency Reports**

Not applicable

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**Annex 1**  
**Professional Services Call-Off Terms**

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## TABLE OF CONTENTS

|     |    |
|-----|----|
| 1.  | 25 |
| 2.  | 13 |
| 3.  | 15 |
| 4.  | 15 |
| 5.  | 23 |
| 6.  | 23 |
| 7.  | 23 |
| 8.  | 23 |
| 9.  | 25 |
| 10. | 23 |
| 11. | 23 |
| 12. | 25 |
| 13. | 25 |
| 15. | 25 |
| 16. | 25 |
| 17. | 25 |
| 18. | 25 |
| 19. | 25 |
| 20. | 25 |
| 21. | 25 |
| 22. | 25 |
| 23. | 25 |
| 24. | 25 |
| 25. | 25 |
| 26. | 25 |
| 27. | 25 |
| 28. | 25 |
| 29. | 25 |
| 30. | 25 |
| 31. | 25 |
| 32. | 25 |
| 33. | 25 |

|                        |  |
|------------------------|--|
| SCHEDULE 1 DEFINITIONS |  |
|------------------------|--|

|    |
|----|
| 34 |
|----|



## 1. DEFINITIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in these Call-Off Terms and in particular Schedule 1 (Definitions).
- 1.2 If no meaning is given to a capitalised expression in this Contract, it shall, in the first instance, be interpreted in accordance with the Order Form and related documents and otherwise in accordance with common interpretation within the relevant services sector/industry where appropriate.

## 2. INTERPRETATION

- 2.1 In this Contract, unless the context otherwise requires:
- 2.1.1 the singular includes the plural and vice versa;
  - 2.1.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 2.1.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 2.1.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 2.1.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
  - 2.1.6 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
  - 2.1.7 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and
  - 2.1.8 any reference which immediately before Exit Day was a reference to (as it has effect from time to time):
    - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European



Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

2.2 In the event and to the extent only of a conflict between the Order Form, these Call-Off Terms and the provisions of the Framework, the conflict shall be resolved in accordance with the following descending order of precedence:

- 2.2.1 subject always to Clauses 2.4 and 4.2.2 of the Call-Off Terms, the Special Terms (if any);
- 2.2.2 the Order Form (except Special Terms (as defined in the Call-Off Terms));
- 2.2.3 the Call-Off Terms;
- 2.2.4 the applicable provisions of the Framework Agreement, except (and subject always to Clause 2.4 and 4.2.2 of the Call-Off Terms) Schedule 13 (Tender) of the Framework Agreement; and
- 2.2.5 Schedule 13 (Tender) of the Framework Agreement.

2.3 Where Framework Schedule 13 (Tender) contains provisions which are more favourable to the Buyer in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Buyer shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.

2.4 Special Terms shall only apply to this Contract if they:

- 2.4.1 are set out in full in the section of the Order Form entitled “Special Terms”; and
- 2.4.2 augment and supplement this Contract and in particular do not amend these Call-Off Terms to any material extent.

### 3. **WARRANTIES AND REPRESENTATIONS AND STANDARDS**

3.1 The Supplier warrants and represents that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract and this Contract is executed by its authorised representative;
- 3.1.2 it is a legally valid and existing organisation incorporated in the place it was formed;
- 3.1.3 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might reasonably be anticipated to affect its ability to perform this Contract;



- 3.1.4 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;
- 3.1.5 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
- 3.1.6 it is not impacted by an Insolvency Event; and
- 3.1.7 all statements made and documents submitted by the Supplier as part of the procurement of the Services and Deliverables under this Contract are true and accurate.

- 3.2 The Supplier shall at all times during the Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

#### 4. **CONTRACT PERIOD**

- 4.1 This Contract shall take effect on the Commencement Date specified in the Order Form and shall unless terminated earlier under the terms of this Contract, shall expire upon the first to occur of the following:
  - 4.1.1 at the end of the Initial Term (as specified in the Order Form);
  - 4.1.2 if the Buyer elects to extend the Initial Term by giving the Supplier at least thirty (30) days' notice before the end of the Initial Term, at the end of the notified Extension Period; or
  - 4.1.3 in any event, at the end of the Maximum Contract Period.
- 4.2 The automatic renewal of the Initial Term, Extension Period and/or any other period:
  - 4.2.1 will only be effective where expressly specified as a Special Term in the Order Form; and
  - 4.2.2 notwithstanding anything to the contrary in the Order Form, will not in any circumstances apply beyond the Maximum Contract Period.

#### 5. **PROVISION AND RECEIPT OF THE SERVICES AND DELIVERABLES**

##### **General**

- 5.1 The Supplier shall ensure the Services and Deliverables comply with the Service Descriptions set out or referred to in the Order Form and/or in accordance with the Statement of Work.
- 5.2 The Supplier shall perform the Services and provide the Deliverables:
  - 5.2.1 in accordance with all applicable Laws;
  - 5.2.2 using Good Industry Practice; and
  - 5.2.3 in accordance with any milestones, dates and/or timescales specified in the Order Form and/or any Statement of Work for such performance or provision or, in the absence of such dates or timescales, in a prompt and timely manner.



- 5.3 In its performance of its obligations under this Contract (including provision of the Services and Deliverables) the Supplier shall at all times comply with this Contract including the Schedules and the applicable provisions of the Framework Agreement..
- 5.4 The Supplier shall take reasonable steps to ensure that the in the performance of its obligations under this Contract (including provision of the Services and Deliverables) it does not disrupt the Buyer's operations, employees or other contractor engaged by the Buyer.
- 5.5 The Supplier shall be responsible, at its own cost, for the provision of all the Supplier Equipment and any other items necessary for the provision of the Services and Deliverables.
- 5.6 The Supplier shall not provide the Services at the Sites unless agreed in the Order Form.
- 5.7 In its receipt of the Services and use of the Deliverables the Buyer shall at all times comply with the provisions of this Contract.
- 5.8 In their dealings under this Contract the Parties shall at all times behave and act reasonably and in good faith towards each other.
- 5.9 In providing the Services and the Deliverables, the Supplier shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Buyer.
- 5.10 All Deliverables provided by the Supplier under this Contract shall be deemed to be completed once written notification has been received by the Supplier from the Buyer confirming that such Deliverables are accepted.
- 5.11 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Buyer.
- 5.12 The Supplier must adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Buyer of the Services and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.

#### **Statements of Work**

- 5.13 Where the Order Form indicates that this Contract shall be subject to a Statement of Work procedure the following provisions shall apply to enable individual Statements of Work or SOWs for Services to be entered into by the Parties:
  - 5.13.1 From time to time during the Contract Period, the Buyer may notify the Supplier of its requirements for Project Services and/or Deliverables. The Parties shall in good faith negotiate the terms of a SOW providing for the provision of the Services and/or Deliverables required by the Buyer. Any SOW agreed by the Parties shall be substantially in the form of the Template SOW attached to the Order Form.



- 5.13.2 Each SOW shall, on signature by both Parties, form part of this Contract and shall not form a separate contract to it. Each SOW shall include (as applicable) its effective commencement date ("SOW Commencement Date").
- 5.13.3 The Parties may agree Supplementary Provisions which apply to a particular SOW. For the avoidance of any doubt, Supplementary Provisions (if any) shall only apply to the relevant SOW and shall not amend or affect any other part of this Contract including any other SOW. For the avoidance of doubt any Change (which includes any Change to a SOW) must be agreed through the Change Control Procedure.
- 5.13.4 This Contract does not commit the Buyer to purchase any Services and/or Deliverables and does not commit the Supplier to provide any Services and/or Deliverables. The Buyer only becomes committed to purchasing, and the Supplier only becomes committed to providing, any Project Services and/or Deliverables upon signature by both Parties of a SOW in respect of such Services and/or Deliverables.

## 6. SUPPLIER PERSONNEL

### Supplier Personnel

- 6.1 The Supplier shall ensure that all Supplier Personnel involved in the performance of this Contract:
  - 6.1.1 are adequately trained and suitably qualified and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - 6.1.2 are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and Standards; and
  - 6.1.3 comply with any instructions issued and deemed to be reasonable by the Buyer from time to time.
- 6.2 The Supplier shall:
  - 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to the Buyer's Premises, specifying why they require admission and giving such other particulars as the Buyer may reasonably require;
  - 6.2.2 where requested by the Buyer, replace any Supplier Personnel whose acts or omissions have caused the Supplier to breach Clause 24;
  - 6.2.3 procure that the Supplier Personnel shall vacate the Buyer Premises immediately on completion of the Services or termination or expiry of this Contract (whichever is the earlier);
  - 6.2.4 subject to clause 9.1, be liable at all time for all acts or omissions of the Supplier Personnel, so that any act or omission of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier; and



- 6.2.5 subject to clause 9.1, indemnify the Buyer against all claims brought by any person employed by them arising from any act or omission of the Supplier and/or any Supplier Personnel.
- 6.3 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may, by giving written notice to the Supplier:
  - 6.3.1 refuse admission to the relevant person(s) to the Buyer's Premises; and/or
  - 6.3.2 require that the Supplier replace as soon as reasonably practicable any such relevant person(s) with a suitably qualified alternative and procure that any security pass issued by the Buyer to the relevant person(s) replaced is surrendered,and the Supplier shall comply with any such notice.

#### **Key Supplier Personnel**

- 6.4 The Supplier shall ensure that the Key Supplier Personnel fulfil the Key Roles at all times during the Contract Period.
- 6.5 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall for the purposes of this Contract be included on the list of Key Supplier Personnel.
- 6.6 The Supplier shall not and shall procure that any Sub-Contractor shall not remove or replace any Key Supplier Personnel unless:
  - 6.6.1 requested to do so by the Buyer or the Supplier obtains the Buyer's prior written consent to such removal or replacement (such consent not to be unreasonably withheld or delayed);
  - 6.6.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 6.6.3 the person's employment or contractual arrangement with the Supplier or Sub-Contractor is terminated for material breach of contract by the employee.
- 6.7 The Supplier shall:
  - 6.7.1 notify the Buyer promptly of the absence of any Key Supplier Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 6.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 6.7.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Supplier Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Supplier Personnel's employment contract, this will mean at least three (3) Months' notice;



- 6.7.4 ensure that all arrangements for planned changes in Key Supplier Personnel provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services and Deliverables; and
- 6.7.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Supplier Personnel whom he or she has replaced.
- 6.8 The Buyer may require the Supplier to remove or procure that any Sub-Contractor shall remove any Key Supplier Personnel that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Supplier Personnel.

## **7. CHARGES, PAYMENT AND INVOICING**

- 7.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services and Deliverables, the Buyer shall pay the undisputed Charges.
- 7.2 The Charges for Services and Deliverables payable by the Buyer during the Contract Period shall be calculated using the relevant pricing information (including applicable currency), charging model, payment profile, invoicing frequency, invoicing procedure and payment method set out or referred to in the Order Form and Framework Schedule 3 (Framework Prices and Charging Structure) as these apply to the relevant Services and Deliverables. Where Charges are expressed in the Order Form to be payable based on milestones, the Supplier shall only be entitled to invoice the Buyer upon receipt of the Buyer's written confirmation that the relevant milestone has been achieved.
- 7.3 The Supplier warrants that it will calculate Charges due under this Contract accurately in compliance with the applicable rates and other details in Schedule 3 (Framework Prices and Charging Structure) of the Framework Agreement and this Contract, including the Charges section of the Order Form which may detail a time and materials, fixed or capped pricing model. Where the Buyer is eligible to benefit from any preferential pricing as agreed between the Supplier and the Government the Supplier shall apply this as a discount on the Framework Prices to calculate the Charges due under this Contract.
- 7.4 The Supplier shall invoice the Charges to the Buyer in accordance with this Clause 7 and the Order Form and the Buyer shall pay all sums properly due and payable to the Supplier within thirty (30) days of receipt of a valid invoice using the payment method specified in the Order Form. The Buyer must accept and process for payment an undisputed Electronic Invoice received from the Supplier.
- 7.5 Where applicable, the Supplier will ensure that:
  - 7.5.1 invoiced amounts are calculated in accordance with the currency conversion mechanism selected by the Buyer in the Order Form based on one of the available options (if any) as set out in Schedule 3 (Framework Prices and Charging Structure) of the Framework Agreement or such other exchange rate conversion mechanism as agreed in writing by the Parties; and



- 7.5.2 each invoice clearly sets out how such currency conversion provisions have been used to calculate the invoiced amounts including the actual exchange rate(s) applied.
- 7.6 Where the Supplier enters into a Sub-Contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract the Supplier shall pay any undisputed sums which are due from the Supplier to the relevant Sub-Contractor, under that Sub-Contract within thirty (30) days from the receipt of a valid invoice. If the Supplier fails to comply with this Clause 7.6, the Buyer may publish the details of the late payment or non-payment.
- 7.7 Unless otherwise agreed in the Order Form, the Charges include all costs and expenses relating to the Services and Deliverables and no further amounts shall be payable by the Buyer to the Supplier in respect of such Services and Deliverables.
- 7.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate (with visibility of the amount as a separate line item) as applicable and paid by the Buyer following delivery of a valid invoice.
- 7.9 The Buyer may retain or set off any amount owed to it by the Supplier (including any Buyer's Existing Entitlement) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.
- 7.10 If the Buyer wishes to exercise its right pursuant to Clause 7.9 it shall give notice to the Supplier, setting out the Buyer's reasons for retaining or setting off the relevant Charges.
- 7.10.1 If there's an invoice dispute, the Buyer must pay any undisputed amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The provision of the Services and/or Deliverables by the Supplier or any Supplier Personnel.
- 7.11 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services and/or Deliverables, then, in addition to its obligations under Clause 8.1 the Supplier shall ensure that its contract with the Worker contains the following requirements:
- 7.11.1 that the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 8.1, or why those requirements do not apply to it. In such case, the Buyer may specify the information which the Worker must provide and the period within which that information must be provided;
- 7.11.2 that the Worker's contract may be terminated at the Buyer's request if:
- (a) the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer; or



- (b) the Worker provides information which the Buyer considers is inadequate to demonstrate how the Worker complies with Clause 8.1 or confirms that the Worker is not complying with those requirements;

7.11.3 that the Buyer 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.

7.12 Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

## 8. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

8.1 Where the Supplier or any Supplier Personnel are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:

8.1.1 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 (including IR35) and National Insurance contributions; and

8.1.2 indemnify the Buyer against any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Personnel.

## 9. LIABILITIES

9.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) shall not exceed the greater of five million pounds (£5,000,000) (or such greater sum (if any) as may be specified in the Order Form) or one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid in that Contract Year.

9.2 Neither Party is liable to the other for:

9.2.1 any indirect Losses; or

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

9.3 Notwithstanding Clauses 9.1 and 9.2, neither Party limits or excludes:

9.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;



- 9.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 9.3.3 any liability that cannot be excluded or limited by Law.
- 9.4 Notwithstanding Clause 9.1 but subject to Clause 9.2, the Supplier's liability:
  - 9.4.1 pursuant to the indemnity in Clause 10.7 shall be unlimited; and
  - 9.4.2 in respect of Losses arising from a breach of the Data Protection Legislation that is caused by the Supplier's Default occurring in each and any Contract Year, shall in no event exceed the lesser of five million pounds (£5,000,000) or 150% (one hundred and fifty percent) of the Charges paid in the Contract Year (the "**Data Protection Liability Cap**") as may be specified in the Order Form.
- 9.5 Each Party must use all reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Contract, including any indemnities.
- 9.6 When calculating the Supplier's liability under Clause 9.1 any items specified in Clause 9.4 will not be taken into consideration.
- Notice and conduct of Claims:**
- 9.7 If a Beneficiary is notified of a Claim then it must notify the Provider as soon as reasonably practical and no later than 10 Working Days.
- 9.8 At the Provider's cost and expense the Beneficiary must both:
  - 9.8.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - 9.8.2 give the Provider reasonable assistance with the Claim if requested.
- 9.9 The Beneficiary must not make admissions about the Claim without the prior written consent of the Provider which cannot be unreasonably withheld or delayed.
- 9.10 The Provider must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 9.11 The Provider must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 9.12 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 9.13 If the Provider pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Provider the lesser of either:
  - 9.13.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
  - 9.13.2 the amount the Provider paid the Beneficiary for the Claim.



**10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Neither Party shall acquire any right, title or interest in or to the Existing IPR of the other Party or its licensors. Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.2 The Supplier grants to the Buyer a royalty-free, non-exclusive, perpetual, irrevocable, non-transferable licence to use the Supplier's Existing IPR for the Buyer or a Central Government Body solely in connection with the Services and/or receipt and use of the Deliverables for the Buyer or a Central Government Body only.
- 10.3 Any Buyer IPR shall vest in the Buyer. The Supplier assigns to the Buyer with full guarantee (or shall procure from the first owner the assignment to the Buyer), title to and all rights and interest in the Buyer IPR. The assignment under this Clause 10.3 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Buyer IPR and the Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Buyer IPR are properly transferred to the Buyer.
- 10.4 The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer's Existing IPR and Buyer IPR solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- 10.4.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on substantially the same terms as set out in Clause 19 (Confidentiality); and
- 10.4.2 the Supplier shall not and shall procure that any relevant Sub-Contractor shall not, without the Buyer's written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.
- 10.5 The Supplier waives (and shall procure that each of the Supplier Personnel shall waive) any moral rights which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, to the extent such rights arise.
- 10.6 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 10.7 The Supplier shall, during and after the Contract Period, on written demand, indemnify the Buyer against all Losses incurred by, awarded against or agreed to be paid by the Buyer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 10.8 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier must, at its own expense and the Buyer's sole option, either:



- 10.8.1 obtain for the Buyer the right to continue using the relevant item which is subject to the IPR Claim; or
- 10.8.2 replace or modify the relevant item which is subject to the IPR Claim with non-infringing substitutes without adversely affecting the functionality or performance of such item.

## 11. PUBLICITY AND BRANDING

- 11.1 The Supplier shall not, and shall take all reasonable steps to ensure the Supplier Personnel do not, make any press announcements or publicise this Contract or any part of it in any way nor use the Buyer's name or brand in any promotion or marketing or announcement of orders, without the Buyer's prior written approval (the decision of the Buyer to approve or not shall not be unreasonably withheld or delayed).
- 11.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Deliverables) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## 12. SECURITY REQUIREMENTS

- 12.1 The Supplier shall, and shall procure that all Supplier Personnel shall, comply with the Buyer's Security Policy, or in the absence of such policy, the Buyer's reasonable security requirements notified to the Supplier from time to time.
- 12.2 Without prejudice to Clause 12.1, where the Supplier (and any Supplier Personnel) have access to the Buyer System then the Supplier shall, and shall procure that all Supplier Personnel shall, comply with the Buyer's enhanced security requirements (which may include compliance with the Buyer's ICT policy) set out in the Order Form (if any).
- 12.3 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:
  - 12.3.1 (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy, (commonly referred to as List X). Further information on List X accreditation can be found at: <https://www.gov.uk/government/publications/security-policy-framework>; and
  - 12.3.2 a number of UK national security cleared personnel prior to the Commencement Date.
- 12.4 If the Supplier fails to comply with Clause 12.3 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 16.2.



- 12.5 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 12.6 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Content, the Supplier will assist and support the Buyer to mitigate any Losses and restore the Services to operating efficiency as soon as possible.
- 12.7 Responsibility for costs will be at the:
  - 12.7.1 Supplier's expense if the Malicious Software originates from the Supplier's technology infrastructure or the Buyer Content where and to the extent that the Buyer Content was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided; or
  - 12.7.2 Buyer's expense if the Malicious Software originates from the Buyer's technology infrastructure or the Buyer Content, while the Buyer Content was under the Buyer's control.

### 13. RECORDS AND AUDIT

- 13.1 The Supplier will maintain full and accurate records, documents and accounts, using Good Industry Practice and generally accepted accounting principles, of the:
  - 13.1.1 operation of this Contract and the Services and/or Deliverables provided under it (including any Sub-Contracts); and
  - 13.1.2 amounts paid by the Buyer under this Contract.
- 13.2 The Supplier's records and accounts will be kept until the latest of the following dates:
  - 13.2.1 7 years after the date of termination or expiry of this Contract; or
  - 13.2.2 another date agreed between the Parties.
- 13.3 During the timeframes highlighted in Clause 13.2, the Supplier will maintain:
  - 13.3.1 commercial records of the Charges and costs (including Sub-Contractors' costs) and any variations to them, including proposed variations;
  - 13.3.2 books of account for this Contract;
  - 13.3.3 access to its published accounts and trading entity information;
  - 13.3.4 proof of its compliance with its obligations under the Data Protection Legislation and the transparency and data protection provisions under this Contract; and
  - 13.3.5 records of its delivery performance under this Contract, including that of its Sub-Contractors.
- 13.4 The Supplier will allow representatives of the Buyer, the Comptroller and Auditor General and their staff, any appointed representatives of the National Audit Office, HM Treasury, the



Cabinet Office and any successors or assigns of any of the above, access to the records, documents, account information referred to in Clause 13.3 (including access to online records (including any Security Assessment Documents) via the Supplier Portal) and Supplier premises as may be required by them and subject to reasonable and appropriate confidentiality undertakings, to:

- 13.4.1 verify that the Supplier is complying with the terms of this Contract, including the accuracy of the Charges (and proposed or actual variations to them under this Contract);
  - 13.4.2 inspect the integrity, confidentiality and security of Personal Data;
  - 13.4.3 review and verify any books of accounts kept by the Supplier in connection with the provision of the Services and Deliverables only for the purposes of auditing the Charges under this Contract;
  - 13.4.4 review and verify any other aspect of the delivery of the Services and provision of the Deliverables including to review compliance with any Law; and
  - 13.4.5 review any records about the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records.
- 13.5 Subject to any confidentiality obligations, the Supplier will provide all audit information within scope and give auditors access to Supplier Personnel and in each case without undue delay.
- 13.6 The Buyer will use reasonable endeavours to ensure that any audit does not unreasonably disrupt the Supplier, but the Supplier accepts that control over the conduct of audits carried out by the auditors is outside of the Buyer's control.
- 13.7 Each Party is responsible for its own costs incurred in respect of its compliance with the audit obligations in this Clause 13, save that the Supplier will reimburse the Buyer its reasonable audit costs if the audit reveals a material Default.

#### 14. **INSURANCE**

- 14.1 Without limitation to the generality of Clause 14.2, the Supplier shall effect and maintain insurances in relation to the performance of this Contract in accordance with Framework Schedule 11 (Insurance Requirements) of the Framework Agreement.
- 14.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 11 (Insurance Requirements), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

#### 15. **PROTECTION OF PERSONAL DATA**

- 15.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor unless otherwise specified in the Schedule



of Processing, Personal Data and Data Subjects. The only processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Buyer and may not be determined by the Supplier. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

- 15.2 The Supplier shall notify the Buyer immediately if it considers that any of the Buyer’s instructions infringe the Data Protection Legislation.
- 15.3 The Supplier shall provide all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Buyer, include:
  - 15.3.1 a systematic description of the envisaged processing operations and the purpose of the Processing;
  - 15.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 15.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 15.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
  - 15.4.1 Process that Personal Data only in accordance with the Schedule of 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 Buyer before Processing the Personal Data unless prohibited by Law;
  - 15.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Buyer may reasonably reject. In the event of the Buyer reasonably rejecting Protective Measures put in place by the Supplier, the Supplier must propose alternative Protective Measures to the satisfaction of the Buyer. Failure to reject shall not amount to approval by the Buyer of the adequacy of the Protective Measures. Protective Measures must take account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 15.4.3 ensure that:



- (a) the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular the Schedule of Processing, Personal Data and Data Subjects);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any of the Supplier Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Supplier's duties under this Clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Buyer or as otherwise permitted by this Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

15.4.4 where the Personal Data is subject to UK GDPR ("UK Personal Data"), not transfer such UK Personal Data outside of the UK, and/or where the Personal Data is subject to the EU GDPR ("EU Personal Data") not transfer such EU Personal Data to a Restricted Country unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:

the transfer is in accordance with UK GDPR Article 45 or section 73 of DPA 2018 for UK Personal Data, and/or Article 45 of EU GDPR for EU Personal Data;

the Buyer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 section 75 for UK Personal Data, and/or Article 46 of the EU GDPR for EU Personal Data as relevant) as determined by the Buyer;

the Data Subject has enforceable rights and effective legal remedies;

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 Buyer in meeting its obligations);

the Supplier complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data; and

in respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with this Clause 15.4.4, the Supplier shall, when requested by the Buyer, promptly enter into an agreement



with the Buyer including or on such provisions as the Standard Contractual Clauses in respect of EU Personal Data and/or in respect of UK Personal Data the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's Standard Contractual Clauses as published by the Information Commissioner's Office and/or such variation as a regulator or the Buyer might require which terms shall, in the event of any conflict, take precedence over those in this Clause 15, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Buyer with respect to the transfer of the Personal Data; and

- 15.4.5 at the written direction of the Buyer, delete or return Personal Data (and any copies of it) to the Buyer on termination of this Contract unless the Supplier is required by Law to retain the Personal Data.
- 15.5 Subject to Clause 15.5, the Supplier shall notify the Buyer immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
  - 15.5.1 receives a Data Subject Request (or purported Data Subject Request);
  - 15.5.2 receives a request to rectify, block or erase any Personal Data;
  - 15.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 15.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 15.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 15.5.6 becomes aware of a Data Loss Event.
- 15.6 The Supplier's obligation to notify under Clause 15.5 shall include the provision of further information to the Buyer in phases, as details become available.
- 15.7 Taking into account the nature of the processing, the Supplier shall provide the Buyer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 15.5 (and insofar as possible within the timescales reasonably required by the Buyer) including by promptly providing:
  - 15.7.1 the Buyer with full details and copies of the complaint, communication or request;
  - 15.7.2 such assistance as is reasonably requested by the Buyer to enable the Buyer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 15.7.3 the Buyer, at its request, with any Personal Data it holds in relation to a Data Subject;



- 15.7.4 assistance as requested by the Buyer following any Data Loss Event; and
- 15.7.5 assistance as requested by the Buyer with respect to any request from the Information Commissioner's Office, or any consultation by the Buyer with the Information Commissioner's Office.
- 15.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 15. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 15.8.1 the Controller determines that the processing is not occasional;
  - 15.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 15.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9 The Supplier shall allow for audits of its Processing activity by the Buyer or the Buyer's designated auditor or representative.
- 15.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 15.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
  - 15.11.1 notify the Buyer in writing of the intended Sub-processor and processing;
  - 15.11.2 obtain the written consent of the Buyer;
  - 15.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 15 such that they apply to the Sub-processor; and
  - 15.11.4 provide the Buyer with such information regarding the Sub-processor as the Buyer may reasonably require.
- 15.12 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 15.13 The Buyer may, at any time on not less than thirty (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 Contract).
- 15.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance, codes of practice, codes of conduct, regulatory guidance, standard clauses or any other related laws arising from the GDPR or the Information Commissioner's Office.



## 16. TERMINATION AND EXPIRY

### Buyer Termination Rights

- 16.1 The Buyer may terminate this Contract without reason (without any liability whatsoever or howsoever arising from the Buyer's termination under this Clause 16.1) at any time by issuing a written notice to the Supplier giving at least thirty (30) Working Days written notice unless a different period is specified in the Order Form.
- 16.2 The Buyer may terminate this Contract at any time with immediate effect for material Default by issuing a written notice to the Supplier where:
- 16.2.1 the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Buyer, capable of remedy; and/or
- 16.2.2 the Supplier commits a Default, including a material Default, which in the opinion of the Buyer is remediable but has not remedied such Default to the satisfaction of the Buyer within fifteen (15) Working Days of being notified in writing to do so.
- 16.3 For the purpose of Clause 16.2, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 16.4 The Buyer may terminate this Contract with immediate effect by issuing a written notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

### Supplier Termination Rights

- 16.5 The Supplier may, by issuing a written notice to the Buyer, terminate this Contract if the Buyer fails to pay an undisputed sum due to the Supplier under this Contract and such sum [is worth over 25% of the Contract Value and] remains outstanding forty 40 Working Days after the receipt by the Buyer of a written notice of non-payment from the Supplier specifying:
- 16.5.1 the Buyer's failure to pay;
- 16.5.2 the correct overdue and undisputed sum;
- 16.5.3 the reasons why the undisputed sum is due; and
- 16.5.4 the requirement on the Buyer to remedy the failure to pay,
- and this Contract shall then terminate on the date specified in the Supplier's written notice (which shall not be less than twenty (20) Working Days from the date of the issue of that notice).
- 16.6 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services for failure of the Buyer to pay undisputed sums of money (whether in whole or in part).



**Supplier Financial Instability:**

- 16.7 The Supplier shall comply with the requirements of Schedule 2 (Financial Difficulties).

**Partial Termination and Suspension**

- 16.8 Where the Buyer has the right to terminate this Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends this Contract it can provide the Services and/or Deliverables itself or buy them from a third party.
- 16.9 The Buyer can only partially terminate or suspend this Contract if the remaining parts of this Contract can still be used to effectively deliver the intended purpose. The Parties must agree any necessary variation required by Clause 16.8 in accordance with Clause 28.1, but the Supplier may not either:
- 16.9.1 reject the variation;
  - 16.9.2 increase the Charges, except where the right to partial termination is under Clause 16.1.
- 16.10 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 16.8.

**17. CONSEQUENCES OF TERMINATION AND EXPIRY AND EXIT MANAGEMENT**

- 17.1 Even if a notice has been served to terminate this Contract, unless otherwise notified by the Buyer, the Supplier must continue to provide the Services and Deliverables until the dates set out in the notice and as necessary to comply with this Clause 17.
- 17.2 Expiry or termination of this Contract will not affect:
- 17.2.1 any rights, remedies or obligations accrued before its termination or expiry (as applicable); and
  - 17.2.2 the right of either Party to recover any amount outstanding at the time of termination or expiry (as applicable).
- 17.3 Upon termination or expiry of this Contract:
- 17.3.1 the rights and obligations of the Parties under this Contract will cease immediately (including the Buyer's payment obligations under the Contract save where and to the extent any payments are expressly stated in these Call-Off Terms to be payable by the Buyer following termination or expiry of this Contract), except those continuing provisions identified in Clause 17.4;
  - 17.3.2 the Buyer will pay any outstanding Charges properly due to the Supplier;
  - 17.3.3 the Supplier will:
    - (a) promptly return all Buyer Property in the possession, custody or control of the Supplier or the Supplier Personnel to the Buyer;



- (b) at no additional cost, promptly deliver all Deliverables (whether or not then complete) to the Buyer in accordance with any reasonable instructions given by the Buyer;
- (c) where the Buyer terminates this Contract under Clause 16.2, at no additional cost, co-operate fully in the handover (if any) and re-procurement (including to a replacement supplier) including to comply with any exit related obligations as specified in the Order Form under the heading 'Off-Boarding' (including where set out or referred to the provision of exit related services);
- (d) within 10 Working Days of the termination or expiry date, return to the Buyer on a pro rata basis any sums paid in advance for Services and/or Deliverables due to be provided by the Supplier under this Contract for any period post the termination or expiry date (as applicable);

17.3.4 each Party will promptly either:

- (a) return all copies of the other's Confidential Information in such Party's custody, possession or control unless there is a legal requirement to keep it or this Contract states otherwise; or
- (b) (where the other Party has given its prior written consent to its destruction) destroy the other Party's Confidential Information and confirm its destruction to the reasonable satisfaction of the other Party.

17.4 The following Clauses survive the termination or expiry of this Contract: Clause 9 (Liabilities), Clause 10 (Intellectual Property Rights), Clause 13 (Records and Audit), Clause 15 (Protection of Personal Data), Clause 17 (Consequences of Termination and Expiry and Exit Management), Clause 20 (Confidentiality), Clauses 21.4 - 21.6 (FOIA), Clause 23 (Invalidity), Clause 31 (Entire Agreement and Third Party Rights), Clause 33 (Governing Law, Jurisdiction and Dispute Resolution), Schedule 1 (Definitions) and any Clauses and Schedules which are expressly or by implication intended to continue.

## 18. APPOINTMENT OF SUB-CONTRACTORS

18.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- 18.1.1 manage any Sub-contractors in accordance with Good Industry Practice; and
- 18.1.2 comply with its obligations under this Contract in the delivery of the Services and provision of the Deliverables.

18.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:



- 18.2.1 the proposed Sub-Contractor's name, registered office and company registration number;
  - 18.2.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
  - 18.2.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 18.3 If requested by the Buyer within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 18.2, the Supplier shall also provide:
  - 18.3.1 a copy of the proposed Sub-Contract; and
  - 18.3.2 any further information reasonably requested by the Buyer.
- 18.4 The Buyer may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 18.2 (or, if later, receipt of any further information requested pursuant to Clause 18.3), object to the appointment of the relevant Sub-Contractor if it considers that:
  - 18.4.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
  - 18.4.2 the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - 18.4.3 the proposed Sub-Contractor employs unfit persons;

in which case, the Supplier shall not proceed with the proposed appointment.
- 18.5 If:
  - 18.5.1 the Buyer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of 10 Working Days of receipt of:
    - (a) the Supplier's notice issued pursuant to Clause 18.2; and
    - (b) any further information requested by the Buyer pursuant to Clause 18.3; and
  - 18.5.2 the proposed Sub-Contract is not a Key Sub-Contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 19 (Appointment of Key Sub-contractors)),

the Supplier may proceed with the proposed appointment.
- 18.6 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.



**19. APPOINTMENT OF KEY SUB-CONTRACTORS**

- 19.1 The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-Contractors are listed in the Supplier's Register of Key Sub-Contractors as updated by the Supplier from time to time in accordance with Clause 15.1 (Register of Key-Subcontractors and Sub-processors) of the Framework Agreement and where such Key Sub-Contractors are set out in the Order Form.
- 19.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of CCS and the Buyer (such consent not to be unreasonably withheld or delayed). CCS and/or the Buyer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- 19.2.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
  - 19.2.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 19.2.3 the proposed Key Sub-Contractor employs unfit persons.
- 19.3 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- 19.3.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
  - 19.3.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 19.3.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 19.3.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 19.3.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
    - (a) the data protection requirements set out in Clause 15 (Data Protection);
    - (b) the FOIA requirements set out in Clause 21 (Transparency and FOIA);
    - (c) the keeping of records in respect of the services being provided under the Key Sub-Contract; and
    - (d) the conduct of audits set out in Clause 13 (Records and Audit);
  - 19.3.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 16 and 17 of this Contract; and
  - 19.3.7 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer.



20. **CONFIDENTIALITY**

- 20.1 For the purposes of this Clause 20, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 20.2 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 20.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
  - 20.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
  - 20.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
  - 20.2.4 without undue delay and within 72 hours of becoming aware 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.
- 20.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 20.3.1 the Recipient is required to disclose the Confidential Information by Law;
  - 20.3.2 the need for such disclosure arises out of or in connection with:
    - (a) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
    - (b) the purpose of the examination and certification of the Buyer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer is making use of any Services provided under this Contract; or
    - (c) the conduct of a Central Government Body review in respect of this Contract;
  - 20.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.



- 20.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 20.5 Subject to Clauses 20.2 and 20.3, the Supplier may only disclose the Buyer's Confidential Information on a confidential basis to:
- 20.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Contract; and
  - 20.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 20.6 Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 20, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 20.7 The Buyer may disclose the Confidential Information of the Supplier:
- 20.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;
  - 20.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 20.7.3 to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 20.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Buyer for any purpose relating to or connected with this Contract;
  - 20.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
  - 20.7.6 to a proposed transferee, assignee or novatee of, or successor in title to the Buyer, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 20.
- 20.8 In the event of a breach by either party of any of the applicable provisions of this Clause 20, , either party reserves the right to terminate this Contract for material Default.
- 20.9 Transparency Information is not Confidential Information.



**21. TRANSPARENCY AND FOIA**

**Transparency**

**21.1 FOIA**

21.2 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information and must not respond directly to a Request for Information addressed to the Buyer unless authorised in writing to do so by the Buyer.

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

21.3.1 publish the Transparency Information; or

21.3.2 comply with any Request for Information

21.4 The Buyer may talk to the Supplier to help it decide whether to publish information under this Clause 21. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

**22. WAIVER**

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

22.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

**23. INVALIDITY AND RELATIONSHIP OF THE PARTIES**

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

23.2 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

**24. PREVENTING FRAUD BRIBERY AND CORRUPTION**

24.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel have at any time prior to the Commencement Date:

24.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or



- 24.1.2 been listed by any government department or agency 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.
- 24.2 The Supplier must not during the Contract Period:
  - 24.2.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); nor
  - 24.2.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 24.3 The Supplier must during the Contract Period:
  - 24.3.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Sub-Contractors to do the same;
  - 24.3.2 keep full records to show it has complied with its obligations under this Clause 24 and give copies to the Buyer on request;
  - 24.3.3 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons (as defined in Section 44(4) of the Criminal Finances Act 2017) of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
  - 24.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017; and
  - 24.3.5 if required by the Buyer, within 20 Working Days of the Commencement Date, and then annually, certify in writing to the Buyer, that it has complied with this Clause 24, including compliance of Supplier Personnel, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 24.4 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 24.1 and 24.3 (inclusive) or has any reason to think that it, or any of the Supplier Personnel, has either:
  - 24.4.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 24.4.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 24.4.3 received a request or demand for any undue financial or other advantage of any kind related to the Framework or any contract entered into under the Framework; or



24.4.4 suspected that any person or Party directly or indirectly related to the Framework or any contract entered into under the Framework has committed or attempted to commit a Prohibited Act.

24.5 If the Supplier notifies the Buyer as required by Clause 24.4, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.

24.6 In any notice the Supplier gives under Clause 24.5 it must specify the:

24.6.1 Prohibited Act;

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

24.6.3 action it has decided to take.

## 25. **EQUALITY, DIVERSITY AND HUMAN RIGHTS**

25.1 The Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:

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

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

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

25.3 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

## 26. **CORPORATE SOCIAL RESPONSIBILITY**

### **Supplier Code of Conduct**

26.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf))

26.2 The Supplier and its Sub-Contractors will:

26.2.1 meet the standards set out in that Code;

26.2.2 comply with the standards set out in this Clause 26; and



- 26.2.3 comply with any such additional corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

#### **Equality and Accessibility**

- 26.3 In addition to legal obligations, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

- 26.3.1 eliminate discrimination, harassment or victimisation of any kind; and
- 26.3.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

#### **Modern Slavery, Child Labour and Inhumane Treatment**

- 26.4 The Supplier:

- 26.4.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
- 26.4.2 shall not require any Supplier Personnel or the personnel of any Sub-Contractors to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- 26.4.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 26.4.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- 26.4.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offenses anywhere around the world;
- 26.4.6 shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
- 26.4.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
- 26.4.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human



trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Clause 26.4;

- 26.4.9 shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
- 26.4.10 shall not use or allow child or slave labour to be used by its Sub-Contractors; and
- 26.4.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Buyer and Modern Slavery Helpline.

#### **Income Security**

26.5 The Supplier shall:

- 26.5.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 26.5.2 ensure that all Supplier Personnel are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 26.5.3 not make deductions from wages:
  - (a) as a disciplinary measure;
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 26.5.4 record all disciplinary measures taken against Supplier Personnel; and
- 26.5.5 ensure that Supplier Personnel are engaged under a recognised employment relationship established through national law and practice.

#### **Working Hours**

26.6 The Supplier shall:

- 26.6.1 ensure that the working hours of Supplier Personnel comply with national laws, and any collective agreements;
- 26.6.2 that the working hours of Supplier Personnel, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 26.6.3 ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;



(b) frequency; and

(c) hours worked;

by individuals and by the Supplier Personnel as a whole;

26.7 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Clause 26.8 below.

26.8 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

26.8.1 this is allowed by national law;

26.8.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

26.8.3 appropriate safeguards are taken to protect the workers' health and safety; and

26.8.4 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

26.9 All Supplier Personnel shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

#### **Sustainability**

26.10 The Supplier shall meet the applicable Government Buying Standards applicable to the Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

#### **Whistleblowing**

26.11 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Buyer any actual or suspected breach of:

26.11.1 Law; or

26.11.2 Clauses 24, 25 and/or 26.

26.12 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Buyer or a Prescribed Person.

### **27. ASSIGNMENT**

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

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



**28. VARIATION**

- 28.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change will only be effective if agreed in writing and signed by both Parties.
- 28.2 For 101(5) of the Regulations, if the Court declares any change to this Contract ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of this Contract as they existed immediately prior to that change and as if the Parties had never entered into that change.

**29. FORCE MAJEURE**

- 29.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:
- 29.1.1 provides a Force Majeure Notice to the other Party;
  - 29.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 29.2 A Party will promptly (on becoming aware of the same) notify the other Party of a Force Majeure event or potential Force Majeure event which could affect its ability to perform its obligations under this Contract.
- 29.3 Each Party will use all reasonable endeavours to continue to perform its obligations under this Contract and to mitigate the effects of Force Majeure.
- 29.4 Either Party can partially or fully terminate this Contract with immediate effect by written notice if the provision of the Services is materially affected by a Force Majeure Event which lasts for twenty (20) days continuously or such shorter period as may be specified in the Order Form.
- 29.5 If the Supplier is the affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 29.6 Where a Party terminates under Clause 29.4:
- 29.6.1 each party must cover its own Losses; and
  - 29.6.2 Clauses 17.2, 17.3, 17.4 and 15.4.5 shall apply.

**30. NOTICES**

- 30.1 All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.



30.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's email address in the Order Form, (the Buyer may, from time to time, change the name and email address of the Buyer Authorised Representative via the Supplier Portal).

30.3 The Supplier shall:

30.3.1 through the Supplier Portal, alert the Buyer and/or Buyer Users to the need to register and keep up to date on the Supplier Portal relevant details of the Buyer Authorised Representative (including his or her email address for notices under this Contract); and

30.3.2 provide all reasonable assistance to the Buyer and/or Buyer Users in first registering via the Supplier Portal and thereafter updating details of the Buyer Authorised Representative (including his or her email address for notices under this Contract) during the Contract Period.

30.4 This Clause 30 does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

**31. ENTIRE AGREEMENT AND THIRD PARTY RIGHTS**

31.1 This Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract. Nothing in this Clause 31.1 shall exclude any liability in respect of misrepresentations made fraudulently.

31.2 A person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**32. CONFLICTS OF INTEREST**

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

32.3 The Buyer can terminate this Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where in the reasonable opinion of the Buyer there is or may be an actual, potential or perceived Conflict of Interest.

**33. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

33.1 This Contract and any Disputes shall be governed by and construed in accordance with the laws of England and Wales.

33.2 In the event of a Dispute arising out of or in connection with this Contract senior representatives of the Parties who have authority to settle the dispute shall, within twenty



(20) Working Days of receipt of a written request from the Party raising the Dispute, meet in good faith to resolve the Dispute.

- 33.3 If the Dispute is not resolved at the meeting described in Clause 33.2, the Parties shall escalate the matter to CCS who may (in its sole discretion) appoint an officer to work with the Parties in good faith negotiations to resolve the Dispute.
- 33.4 If after (20) Working Days of escalation to CCS under Clause 33.2 the Dispute remains unresolved the Parties may decide to settle it by mediation using the CEDR Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved pursuant to Clause 33.5.
- 33.5 The Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
  - 33.5.1 determine the Dispute;
  - 33.5.2 grant interim remedies; and
  - 33.5.3 grant any other provisional or protective relief.



## SCHEDULE 1 DEFINITIONS

1. In accordance with Clause 1 (Definitions), in this Contract the following expressions shall have the meanings ascribed in the table below.

|                                     |   |
|-------------------------------------|---|
| <b>Affected Party</b>               | means the Party seeking to claim relief in respect of a Force Majeure Event;  |
| <b>Affiliates</b>                   | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;  |
| <b>Beneficiary</b>                  | means a Party having (or claiming to have) the benefit of an indemnity or a right to be defended (as applicable) under this Contract;   |
| <b>Buyer</b>                        | means the organisation eligible to use the Framework as specified in the Order Form;  |
| <b>Buyer Content</b>                | means the data (together with any databases) including any Personal Data, content, materials, information and software which are controlled, uploaded or otherwise transferred by or on behalf of the Buyer to the relevant environments hosted by or on behalf of the Supplier pursuant to the Services including any derivative data that is generated in the relevant environments but excluding metadata where and to the extent such metadata:<br>a) is generated by the Supplier's Services under this Contract solely for administrative and/or service maintenance purposes;<br>b) is not under the control of the Buyer; and<br>c) does not contain any Personal Data; |
| <b>Buyer's Existing Entitlement</b> | means Buyer's funds held on account by the Supplier in respect of another transaction(s) outside of this Contract and to be used as part or whole payment of the Charges;   |
| <b>Buyer IPR</b>                    | means in any case where this has been agreed on the Order Form:<br>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items; and/or<br>b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;<br><br>and always as varied in accordance with the IPR section of the Order Form.<br><br>Buyer IPR shall not include the Supplier's Existing IPR;  |
| <b>Buyer Premises</b>               | means premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services and/or Deliverables (or any of them) as set out or referred to in the Order Form;   |
| <b>Buyer Property</b>               | means the property, other than real property and IPR, including the Buyer System issued or made available to the Supplier by the buyer in connection with this Contract as set out or referred to in the Order Form;  |



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| <b>Buyer System</b>                       | means the Buyer's production computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or in respect of which access may be granted to the Supplier to provide the Services;  |
| <b>Call-Off Terms</b>                     | means these terms and conditions;  |
| <b>CCS</b>                                | means Crown Commercial Service, the authority to the Framework;  |
| <b>Central Government Body</b>            | <p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>a) Government Department;</li><li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>c) Non-Ministerial Department; or</li><li>d) Executive Agency;</li></ul>   |
| <b>Charges</b>                            | means the charges payable to the Supplier by the Buyer under this Contract in respect of the Services, calculated in accordance with this Contract (including Framework Schedule 3 (Framework Prices and Charging Structure)) and as set out or referred to in the Order Form;   |
| <b>Claim</b>                              | means any claim which it appears that a Beneficiary is, or may become, entitled to indemnification or a right to be defended (as applicable) under this Contract;  |
| <b>Commencement Date</b>                  | means the date specified as such in the Order Form;  |
| <b>Commercially Sensitive Information</b> | the Confidential Information listed in the Framework or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;  |
| <b>Confidential Information</b>           | <p>means the Buyer's confidential information and/or the Supplier's confidential information, as the context requires, but not including any information which:</p> <ul style="list-style-type: none"><li>(a) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</li><li>(b) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</li><li>(c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or</li></ul> |



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|  | (d) was independently developed without access to the Confidential Information;  |
| <b>Conflict of Interest</b>              | a conflict between the financial or personal duties of the Supplier or the Supplier's staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;  |
| <b>Contract</b>                          | means the contract between the Buyer and the Supplier (entered into pursuant to the terms of the Framework) consisting of:<br>a) the Order Form (and all documents set out or expressly incorporated by reference in it); and<br>b) the Call-Off Terms;  |
| <b>Contract Period</b>                   | means the duration of this Contract as specified in the Order Form;  |
| <b>Contract Value</b>                    | means the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;  |
| <b>Contract Year</b>                     | means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;  |
| <b>Control</b>                           | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;  |
| <b>Controller</b>                        | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;   |
| <b>Crown Body</b>                        | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| <b>CRTPA</b>                             | means the Contracts (Rights of Third Parties) Act 1999;  |
| <b>Data Loss Event</b>                   | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;   |
| <b>Data Protection Impact Assessment</b> | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;  |
| <b>Data Protection Legislation</b>       | means :(i) the UK GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to Processing of personal data and privacy; (iii) the EU GDPR to the extent that it applies; and (iv) all applicable Law about the Processing of personal data and privacy;  |
| <b>Data Protection Liability Cap</b>     | has the meaning set out in Clause 9.4.2;   |
| <b>Data Protection Officer</b>           | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;   |
| <b>Data Subject</b>                      | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;   |



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| <b>Data Subject Request</b> | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;   |
| <b>Default</b>              | means any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or its personnel in connection with or in relation to this Contract or the subject matter of this Contract and in respect of which the Supplier is liable to the Buyer;  |
| <b>Deliverables</b>         | means any item or feature in the supply of Services delivered or to be delivered by the Supplier to the Buyer in accordance with this Contract as specified in the Order Form;  |
| <b>Dispute</b>              | means any claim, dispute or difference arises out of or in connection with this Contract (whether contractual or non contractual) or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;  |
| <b>DPA 2018</b>             | means the Data Protection Act 2018;   |
| <b>EIR</b>                  | the Environmental Information Regulations 2004;   |
| <b>Electronic Invoice</b>   | an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;   |
| <b>EU GDPR</b>              | Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;  |
| <b>Exit Day</b>             | shall have the meaning in the European Union (Withdrawal) Act 2018;   |
| <b>Existing IPR</b>         | means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);   |
| <b>FOIA</b>                 | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;   |
| <b>Force Majeure Event</b>  | <p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations (except those events, occurrences, circumstances, matters or causes which are attributable to any wilful act, neglect or failure to take reasonable preventative action by the relevant Party) arising from:</p> <p>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially</p> |



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|                             | <p>delay the Affected Party from performing its obligations under this Contract;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>c) acts of a Crown Body, local government or regulatory bodies;</p> <p>d) fire, flood or any disaster; or</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain;</p> <p>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>iii) any failure of delay caused by a lack of funds;</p>   |
| <b>Force Majeure Notice</b> | means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;  |
| <b>Framework Agreement</b>  | means the framework agreement reference RM6292 between the Supplier and CCS;  |
| <b>Government</b>           | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;  |
| <b>Insolvency Event</b>     | <p>means, in respect of the Supplier:</p> <p>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</p> <p>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>c) 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</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>e) an application 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</p> |



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|  | <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) 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</p> <p>h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>  |
| <b>Intellectual Property Rights or IPR</b>   | <p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p> |
| <b>International Data Transfer Agreement</b> | <p>means the International Data Transfer Agreement issued by the Information Commissioner's Office under section 119A(1) of the Data Protection Act 2018, version A1.0, in force 21 March 2022 and any updates or replacements as may be issued by the Information Commissioner's Office from time to time in accordance with section 119A(1) of the Data Protection Act 2018;</p>   |
| <b>International Data Transfer Addendum</b>  | <p>means the International Data Transfer Addendum to the EU Standard Contractual Clauses issued by the Information Commissioner's Office under section 119A(1) of the Data Protection Act 2018, version B1.0, in force 21 March 2022 and any updates or replacements as may be issued by the Information Commissioner's Office from time to time in accordance with section 119A(1) of the Data Protection Act 2018;</p>   |
| <b>IPR Claim</b>                             | <p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under this Contract;</p>  |
| <b>Key Sub-Contract</b>                      | <p>means each Sub-Contract with a Key Sub-Contractor ;</p>   |
| <b>Key Sub-Contractor</b>                    | <p>means any Sub-Contractor:</p> <p>a) which performs a critical role in the provision of all or part of the Services;</p>   |



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|                                | <p>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Services and/or Deliverables; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract;</p>        |
| <b>Know-How</b>                | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date;   |
| <b>Law</b>                     | 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 Supplier is bound to comply; |
| <b>Losses or Loss</b>          | means all losses, liabilities, damages, costs, fines, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;   |
| <b>Malicious Software</b>      | means 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;                             |
| <b>Modern Slavery Helpline</b> | means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <a href="https://www.modernslaveryhelpline.org/report">https://www.modernslaveryhelpline.org/report</a> or by telephone on 08000 121 700;   |
| <b>National Insurance</b>      | contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);   |
| <b>Order</b>                   | means the order placed by the Buyer with the Supplier for the provision of the Services and/or Deliverables in accordance with the Framework and under the terms of this Contract;   |
| <b>Order Form</b>              | means the form (based on the template included at Annex [ ] to Framework Schedule 4 (Template Order Form and Template Call-Off Terms)) which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided;   |
| <b>Party</b>                   | means a party to this Contract, namely either the Buyer or the Supplier (together the " <b>Parties</b> ");   |
| <b>Personal Data</b>           | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;   |



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| <b>Personal Data Breach</b>  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;  |
| <b>Processing</b>            | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and “Process” and “Processed” shall be interpreted accordingly;   |
| <b>Processor</b>             | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;  |
| <b>Prohibited Acts</b>       | <p>means:</p> <p>to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <p>induce that person to perform improperly a relevant function or activity; or</p> <p>reward that person for improper performance of a relevant function or activity;</p> <p>to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; or</p> <p>committing any offence:</p> <p>under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>under legislation or common law concerning fraudulent acts; or</p> <p>defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</p> <p>any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p> |
| <b>Protective Measures</b>   | 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 the such measures adopted by it including those set out or referred to in the Security Policy;  |
| <b>Provider</b>              | means a Party from whom an indemnity or a right to be defended (as applicable) is sought under this Contract;   |
| <b>Regulations</b>           | means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);  |
| <b>Relevant Requirements</b> | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;   |
| <b>Reminder Notice</b>       | means a notice sent in accordance with Clause 16.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;  |



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| <b>Request for Information</b>                                 | means a request for information or an apparent request relating to this Contract or an apparent request for such information under the FOIA or the EIRs;  |
| <b>Restricted Country</b>                                      | means any country other than those countries as expressly stated in the Order Form or where no countries are stated means any country other than:<br>a) a member of the European Economic Area;<br>b) the United Kingdom; or<br>c) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the GDPR;   |
| <b>Schedule of Processing, Personal Data and Data Subjects</b> | means the schedule of processing, personal data and data subjects set out in [insert cross reference] (to be completed by the Buyer) which sets out various details concerning the processing of Personal Data including:<br>a) identity of the Controller and Processor;<br>b) subject matter of processing;<br>c) duration of the processing;<br>d) nature and purposes of the processing;<br>e) type of Personal Data being Processed;<br>f) categories of Data Subject; and<br>g) plan for return of the data once the processing is complete unless requirement under Data Protection Legislation to preserve that type of data; |
| <b>Services</b>  | means the services which the Supplier shall make available to the Buyer under this Contract as set out or referred to in the Order Form;  |
| <b>Service Request</b>   | means a request for Services submitted by or on behalf of the Buyer and/or any Buyer User via the Supplier Portal in accordance with the procedure for requesting Services set out in the Order Form;   |
| <b>Security Policy</b>   | means the security policy/ies, referred to in [Attachment 2] of the Order Form, in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;  |
| <b>Services Specification</b>                                  | means the specification of the Services as set out or referred to in the Professional Services Terms required section of the Order Form;  |
| <b>Sites</b>   | means any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:<br>a) the Services and/or Deliverables are (or are to be) provided; or<br>b) the Supplier manages, organises or otherwise directs the provision or the use of the Services and/or Deliverables,<br><br>and which are set out in or referred to in the Order Form;  |
| <b>Standards</b>   | means any standards set out or referred to in these Call-Off Terms, the Order Form and the Framework;   |



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| <b>Standard Contractual Clauses</b> | means the standard contractual clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;  |
| <b>Sub-Contract</b>                 | means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof;   |
| <b>Sub-Contractor</b>               | means any third party other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;  |
| <b>Sub-processor</b>                | means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract ;   |
| <b>Supplier</b>                     | means the entity identified as such in the Order Form;  |
| <b>Supplier Equipment</b>           | means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;  |
| <b>Supplier Personnel</b>           | means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Contract;  |
| <b>Transparency Information</b>     | means the Transparency Reports (including information relating to the Services and performance of this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements specified in the Framework) and the content of this Contract, including any changes to this Contract agreed from time to time, except for:<br>a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer;<br>and<br>b) Commercially Sensitive Information; |
| <b>Transparency Reports</b>         | means the information relating to the Services and/or Deliverables and performance of this Contract which the Supplier is required to provide to the Buyer;   |
| <b>Worker</b>                       | any one of the Supplier Personnel which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Services and/or Deliverables;   |



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| <b>Working Day</b> | means any day other than a Saturday, Sunday or public holiday in England and Wales; and  |
| <b>VAT</b>         | means value added tax in accordance with the provisions of the Value Added Tax Act 1994. |



## SCHEDULE 2 FINANCIAL DIFFICULTIES

### 1. Definitions

1.1 In this Schedule, the following definitions shall apply:

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| <b>“Applicable Financial Indicators”</b>           | means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;  |
| <b>“Bronze Contract”</b>                           | A Call-Off Contract categorised as a Bronze contract using the Cabinet Office Contract Tiering Tool;  |
| <b>“Cabinet Office Markets and Suppliers Team”</b> | means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;   |
| <b>“Credit Rating Threshold”</b>                   | the minimum credit rating level for each entity in the FDE Group as set out in Annex 1 to this Schedule;  |
| <b>“FDE Group”</b>                                 | means the [Supplier, Key Sub-contractors, [the Guarantor] and the [Monitored Suppliers]];   |
| <b>“Financial Distress Event”</b>                  | Any of the events listed in Paragraph 3.1 of this Schedule;   |
| <b>“Financial Distress Remediation Plan”</b>       | a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs;   |
| <b>“Financial Indicators”</b>                      | in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule and in respect of each Monitored Supplier, means those Applicable Financial Indicators; |
| <b>“Financial Target Thresholds”</b>               | means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;   |
| <b>“Monitored Suppliers”</b>                       | means those entities specified at paragraph 5.2 of this Schedule;   |



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| <b>“Rating Agencies”</b>    | The rating agencies listed in Annex 1 of this Schedule;   |
| <b>“Strategic Supplier”</b> | means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> . |

## 2. Warranties and duty to notify

- 2.1 The Supplier warrants and represents to the Buyer for the benefit of the Buyer that as at the Effective Date:
- 2.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 to this Schedule; and
  - 2.1.2 the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 The Supplier shall:
- 2.3.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
  - 2.3.2 monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within ninety (90) days after the Accounting Reference Date; and
  - 2.3.3 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1, and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated that entity at or below the applicable Credit Rating Threshold.
- 2.5 Each report submitted by the Supplier pursuant to paragraph 2.3.2 shall:
- 2.5.1 be a single report with separate sections for each of the FDE Group entities;
  - 2.5.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;



- 2.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- 2.5.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- 2.5.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.

### 3. Financial Distress events

#### 3.1 The following shall be Financial Distress Events:

- 3.1.1 the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
  - 3.1.2 an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
  - 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
  - 3.1.4 an FDE Group entity committing a material breach of covenant to its lenders;
  - 3.1.5 a Key Sub-contractor notifying CCS or the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
  - 3.1.6 any of the following:
    - (a) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
    - (b) non-payment by an FDE Group entity of any financial indebtedness;
    - (c) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
    - (d) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
    - (e) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;
1. in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Deliverables in accordance with the Contract; and



- 3.1.7 any [one] of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

#### **4. Consequences of Financial Distress Events**

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Buyer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
- 4.2.1 rectify such late or non-payment; or
  - 4.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
- 4.3.1 at the request of the Buyer, meet the Buyer as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with the Contract; and
  - 4.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1 that the Financial Distress Event could impact on the continued performance and delivery of the Deliverables in accordance with the Contract:
    - (a) submit to the Buyer for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing); and
    - (b) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Buyer may reasonably require in order to understand the risk to the Deliverables, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
- 4.4 The Buyer shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Buyer does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Buyer within 5 Working



Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Buyer or referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms under Paragraph 4.5.

- 4.5 If the Buyer considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure in Clause 34 of the Core Terms.
- 4.6 Following approval of the Financial Distress Remediation Plan by the Buyer, the Supplier shall:
- 4.6.1 on a regular basis (which shall not be less than fortnightly):
    - (a) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Buyer, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Deliverables in accordance with this Contract; and
    - (b) provide a written report to the Buyer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
  - 4.6.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6.1, submit an updated Financial Distress Remediation Plan to the Buyer for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
  - 4.6.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3.2(b) is available when required and on request from the Buyer and within reasonable timescales. Such measures may include:
- 4.8.1 obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Buyer and/or entering into confidentiality agreements which permit disclosure;
  - 4.8.2 agreeing in advance with the Buyer, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Buyer;



- 4.8.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Buyer (which may include making price sensitive information available to the Buyer nominated personnel through confidential arrangements, subject to their consent); and
- 4.8.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

## 5. Financial Indicators

[Guidance: The Financial Indicators set out in the table at paragraph 5.1 are examples of the types of Financial Indicators that you may wish to use in respect of the Supplier's financial standing for contracts recognised as Gold or Silver in accordance with the Cabinet Office Contract Tiering Tool. These should be aligned with any financial standing criteria used at the selection stage of the procurement and you may wish to delete or insert different indicators as appropriate. Financial Indicators may be restricted to specific key indicators rather than including all of the criteria used at the selection stage]

5.1 Subject to the calculation methodology set out at Annex 3 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

| Financial Indicator   | Calculation <sup>1</sup>  | Financial Target Threshold:                          | Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 2.3(b)]   |
|---|---|--|---|
| <p>1</p> <p>[Operating Margin]</p> <p>OR</p> <p>[The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods]</p> | <p>[Operating Margin = Operating Profit / Revenue]</p>                | <p>[&gt; [X%]]</p>                                   | <p>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]</p> |
| <p>2</p> <p>[Free Cash Flow to Net Debt Ratio]</p>  | <p>[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]</p> | <p>[&gt; [X%]]</p> <p>OR</p> <p>[&lt; [X]] times</p> | <p>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12</p>   |



|                            |  |               |  |
|----------------------------|--|---------------|--|
| OR                         | OR   |               | months ending on, and Net Debt at, the relevant [accounting reference date / half year end]  |
| [Net Debt to EBITDA Ratio] | [Net Debt to EBITDA ratio = Net Debt / EBITDA]   |               |  |
| 3                          | [Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA] | [< [X]] times | Tested and reported yearly in arrears within 90 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date                |
| 4                          | [Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]             | [> [X]] times | Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end] |
| 5                          | [Acid Ratio = (Current Assets – Inventories) / Current Liabilities]                          | [> [X]] times | Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]                          |
| 6                          | [Net Asset Value = Net Assets]   | [> £0]        | Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]                          |
| 7                          | [Group Exposure / Gross Assets]  | [< [X]]%      | Tested and reported yearly in arrears within 90 days of each accounting reference date   |



|  |               |               |   |
|--|---------------|---------------|---|
| <b>[Group Exposure Ratio]</b>              |               |               | <i>based upon figures at the relevant accounting reference date</i> |
| <b>Financial Target 8</b><br><b>[etc.]</b> | <b>[etc.]</b> | <b>[etc.]</b> | <b>[etc.]</b>   |

- b) Key: 1 – see Annex 3 to this Schedule which sets out the calculation methodology to be used in the calculation of each financial indicator.

## 5.2 Monitored Suppliers

**[Guidance: Insert details of any other entities which the Supplier is required to monitor against the Financial Indicators. These are in addition to the Supplier's monitoring of itself, the Guarantor and the Key Sub-contractors. Not all the Financial Indicators may be applicable to a Monitored Supplier, so indicate which of those are to apply in the table below]**

| <b>Monitored Supplier</b>  | <b>Applicable Financial Indicators</b><br><br>(these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers) |
|--|--|
| <b>[Entity 1 e.g Group Member, Sub-contractor, Relevant Parent Company etc.]</b> | <b>[1 – Operating Margin]</b><br><b>[2 – etc..]</b><br><b>[3][4][5][6][7][8][etc..]</b>  |
| <b>[Entity 2 e.g Group Member, Sub-contractor, Relevant Parent Company etc.]</b> | <b>[1 – Operating Margin]</b><br><b>[2 – etc.]</b><br><b>[3][4][5][6][7][8][etc..]</b>   |
| <b>[etc.]</b>  | <b>[etc.]</b>  |

## 6. Termination rights

### 6.1 The Buyer shall be entitled to terminate the Contract if:

- 6.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.3.3;



- 6.1.2 the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- 6.1.3 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6.3,
- i. which shall be deemed to be an event to which Clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply accordingly.

## **7. Primacy of Credit Ratings**

- 7.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1.7, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 to this Schedule, then:
  - 7.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
  - 7.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).



## **Annex 1: Rating Agencies and their standard Rating System**

[Rating Agency 1]

[Rating Agency 2]



**Annex 2: Credit Ratings and Credit Rating Thresholds**

| Entity              | Credit rating (long term) |
|---------------------|---------------------------|
| Supplier            | [insert rating]           |
| [Guarantor]         | [insert rating]           |
| [Key Subcontractor] | [insert rating]           |



### Annex 3: Calculation methodology for Financial Indicators

**[Guidance: Amend this section as appropriate to reflect the calculation methodology for those Financial Indicators that are selected for inclusion in Paragraph 5.1 of this Schedule]**

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

#### General methodology

- 1 **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 2 **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 3 **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 4 **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

#### Specific Methodology

| Financial Indicator                     | Specific Methodology  |
|---|---|
| 1<br>[Operating Margin]                 | <p>[The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.]</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.]</p> |
| 2<br>[Free Cash Flow to Net Debt Ratio] | <p>["Free Cash Flow" = Net Cash Flow from Operating Activities – Capital Expenditure]</p> <p>"Capital Expenditure" = Purchase of property, plant &amp; equipment + purchase of intangible assets</p> <p>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents</p>   |



|  |   |
|--|---|
| <p>OR</p> <p><b>[Net Debt to EBITDA Ratio]</b></p> | <p>The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements.</p> <p><u>Net Cash Flow from Operating Activities</u>: This should be stated after deduction of interest and tax paid.</p> <p><u>Capital expenditure</u>: The elements of capital expenditure may be described slightly differently but will be found under 'Cash flows from investing activities' in the Statement of Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.</p> <p><u>Net Debt</u>: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.]</p> <p>OR</p> <p><b>[“Net Debt” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</b></p> <p><b>“EBITDA” = Operating profit + Depreciation charge + Amortisation charge</b></p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><u>Net Debt</u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest</p> |
|--|---|



|   |  |
|---|--|
|   | <p>bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p><b>EBITDA:</b> Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. <i>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</i></p> |
| <p>3</p> <p><b>[Net Debt + Net Pension Deficit to EBITDA ratio]</b></p> | <p><b>["Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</b></p> <p><b>"Net Pension Deficit" = Retirement Benefit Obligations – Retirement Benefit Assets</b></p> <p><b>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</b></p> <p>The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><b>Net Debt:</b> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to</p>   |



|  |   |
|--|---|
|  | <p>borrowings (but <i>not</i> non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p><u>Net Pension Deficit</u>: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms.</p> <p>Where 'Net Debt + Net Pension Deficit' is negative, the relevant Financial Target Threshold should be treated as having been met.</p> <p><u>EBITDA</u>: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates.</p> <p>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</p> <p>Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless 'Net Debt + Net Pension Deficit' is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).]</p> |
| <p>4</p> <p><b>[Net Interest Paid Cover]</b></p> | <p><b><i>["Earnings Before Interest and Tax" = Operating profit</i></b></p> <p><b><i>"Net Interest Paid" = Interest paid – Interest received</i></b></p> <p>Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates.</p> <p>Interest received and interest paid should be shown on the face of the Cash Flow statement.</p> <p>Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.].</p>  |



|  |   |
|--|---|
| <p>5</p> <p>[Acid Ratio]</p>           | <p>[All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.]</p>   |
| <p>6</p> <p>[Net Asset value]</p>      | <p>[Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).]</p>  |
| <p>7</p> <p>[Group Exposure Ratio]</p> | <p><b><i>["Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings]</i></b></p> <p><b><i>"Gross Assets" = Fixed Assets + Current Assets</i></b></p> <p><u>Group Exposure</u>: Balances owed by (ie receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p>Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met.</p> <p>In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p><u>Gross Assets</u>: Both Fixed assets and Current assets are shown on the face of the Balance Sheet]</p> |
| <p>8</p>                               | <p>[Etc..]</p>  |



|  |  |
|--|--|
| <b>[Insert additional<br/>Financial Indicators as<br/>necessary]</b> |  |
|--|--|



Crown  
Commercial  
Service

Annex 4: **NOT USED**



## Annex 5: Optional clauses for Bronze Contracts

### 1. Definitions

1.1 In this Annex 5, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|                                   |   |
|-----------------------------------|---|
| <b>"Credit Rating Threshold"</b>  | 1 the minimum credit rating level for the Monitored Company as set out in Appendix 2;   |
| <b>"Financial Distress Event"</b> | 2 the occurrence or one or more of the following events: <ul style="list-style-type: none"><li>a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li><li>b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</li><li>c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;</li><li>d) Monitored Company committing a material breach of covenant to its lenders;</li><li>e) a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li><li>f) any of the following:<ul style="list-style-type: none"><li>i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li><li>ii) non-payment by the Monitored Company of any financial indebtedness;</li></ul></li></ul> |



- iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or
- iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company

3 in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Call-Off Contract;

**"Financial Distress  
Service Continuity Plan"**

4 a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with [each Call-Off] Contract in the event that a Financial Distress Event occurs;

**"Monitored Company"**

5 Supplier [the Guarantor] or any Key Subcontractor]

**"Rating Agencies"**

6 the rating agencies listed in Appendix 1.

**2. WHEN THIS SCHEDULE APPLIES**

2.1 The Parties shall comply with the provisions of this Annex 5 in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.

2.2 The terms of this Annex 5 shall survive:

2.2.1 under the Framework Contract until the later of (a) the termination or expiry of the Framework Contract or (b) the latest date of termination or expiry of any call-off contract entered into under the Framework Contract (which might be after the date of termination or expiry of the Framework Contract); and

2.2.2 under the Call-Off Contract until the termination or expiry of the Call-Off Contract.

**3. What happens when your credit rating changes**

3.1 The Supplier warrants and represents to the Buyer that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Appendix 2.

3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.

3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide the Buyer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Buyer (such requests not to exceed 4 in any Contract Year) with written calculations of [Guidance

**Note: check with Commercial Finance what provisions to make here – the quick ratio is not currently**



**used**] the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by the Buyer. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- |   |  |
|---|--|
| A | is the value at the relevant date of all cash in hand and at the bank of the Monitored Company];   |
| B | is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Monitored]; and  |
| D | is the value at the relevant date of the current liabilities of the Monitored Company].  |

#### 3.4 The Supplier shall:

- 3.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

#### 4. What happens if there is a financial distress event

4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6 of this Annex 5.

**[Guidance Note: delete this clause if there are no Key Subcontractors or the Key Subcontractors are not Monitored Company]**

4.2 [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a



genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

- 4.2.1 rectify such late or non-payment; or
- 4.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]

4.3 The Supplier shall and shall procure that the other Monitored Companies shall:

- 4.3.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and
- 4.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:
  - (a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
  - (b) provide such financial information relating to the Monitored Company as the Buyer may reasonably require.

4.4 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Buyer or referred to the Dispute Resolution Procedure.

4.5 If the Buyer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

4.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:

- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;
- 4.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and



4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

4.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.

4.8 CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

## **5. When CCS or the Buyer can terminate for financial distress**

### **5.1 CCS SHALL BE ENTITLED TO TERMINATE THIS CONTRACT AND BUYERS SHALL BE ENTITLED TO TERMINATE THEIR CALL-OFF CONTRACTS FOR MATERIAL DEFAULT IF:**

5.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 3.4;

5.1.2 The Buyer and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

5.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

5.2 If the Contract is terminated in accordance with Paragraph 5.1, Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Contract had been terminated under Clause 10.4.1.

## **6. What happens If your credit rating is still good**

6.1 Without prejudice to the Supplier's obligations and CCS' and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and

6.1.2 The Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).



**APPENDIX 1: RATING AGENCIES**

[Rating Agency 1]

[Rating Agency 2]



Appendix 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

**Part 1: Current Rating**

| ENTITY              | Credit rating (long term) |
|---------------------|---------------------------|
| Supplier            | [D&B Threshold]           |
| [Guarantor]         | [D&B Threshold]           |
| [Key Subcontractor] | [D&B Threshold]           |