

Order Form

1. Contract Reference	CR_1747	
2. Date	28/02/2023	
3. Buyer	UK Export Finance 1 Horse Guards Road London SW1A 2HQ	
4. Supplier	Varella Advogados & Associados Estrada União e Indústria, nº 10.673, Grupo G, Itaipava, Petrópolis, Rio de Janeiro, Brazil Zip Code: 25.730-740 Federal Taxpayers Registry (CNPJ/MF) nº 04.629.931/0001-04	
5. The Contract	<p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and Schedules.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay the conclusion of the Contract.</p>	
6. Deliverables	Services	Description of Deliverables is set out in detail in Schedule 1. To be performed at the Supplier's premises.
7. Specification	The specification of the Deliverables is as set out in Schedule 1 (Specification of Legal Services).	
8. Term	The Term shall commence on the date that the last party signed the Contract ("the Start Date") and the Expiry Date shall be 2 years from the Start Date unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.	

	The Buyer may extend the Contract for a period of up to 12 months by giving no less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.	
9. Charges	The Charges for the Deliverables shall be as set out in Schedule 2.	
10. Reimbursable Expenses	Recoverable when the expenses are incurred in accordance with clause 5.5 of the Contract.	
11. Payment	<p>Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier.</p> <p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>[Redacted] or such other email address(es) specified by the Buyer from time to time.</p> <p>Within 10 Working Days of receipt of "the countersigned copy of this Order Form, the Buyer will send the Supplier a unique PO Number. The Supplier must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant with the requirements under clause 5.4 of the Conditions and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment, please contact your Buyer contact.</p>	
12. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>[Redacted] Legal Adviser [Redacted] [Redacted]</p> <p>or, in her absence,</p> <p>[Redacted] Head of Legal [Redacted]</p>	
13. Address for notices	Buyer:	Supplier:

	<p>UK Export Finance 1 Horse Guards Road London SW1A 2HQ</p> <p>Attention: [Redacted] Legal Adviser</p> <p>Email: [Redacted]</p>	<p>Varella & Advogados Associados Estrada União e Indústria, nº 10.673, Grupo G, Itaipava, Petrópolis, Rio de Janeiro, Brazil Zip Code: 25.730-740</p> <p>Attention: [Redacted] Partner</p> <p>[Redacted] Partner</p> <p>Email: [Redacted]</p>
14.Key Personnel Contacts	<p>Buyer contact:</p> <p>UK Export Finance 1 Horse Guards Road London SW1A 2HQ</p> <p>Attention: [Redacted] Legal Adviser</p> <p>Email: [Redacted]</p>	<p>Supplier contact:</p> <p>Varella & Advogados Associados Estrada União e Indústria, nº 10.673, Grupo G, Itaipava, Petrópolis, Rio de Janeiro, Brazil Zip Code: 25.730-740</p> <p>Attention: [Redacted] Partner</p> <p>[Redacted] Partner</p> <p>Email: [Redacted]</p>
15.Key Subcontractors	Not applicable.	
16.Procedures and Policies	<p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>	

<p>17. Agreed Variations/</p>	<p>The parties agree that for the purposes of the Contract, the Conditions are modified and supplemented as follows:</p> <p>1. Reimbursable Expenses</p> <p>The definition of Reimbursable Expenses shall be deleted and replaced with the following:</p> <p>““Reimbursable Expenses” means the reasonable out-of-pocket travel and subsistence (for example, court costs, notary fees, sworn translations of any necessary document, courier and other delivery fees, postage, local travel expenses, photocopying and other reproduction costs) expenses, properly and necessarily incurred in the performance of the Services in accordance clause 5.5, but not including:</p> <p>(a) travel expenses incurred as a result of the Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>(b) subsistence expenses incurred by the Supplier Staff whilst performing the Services at their usual place of work, or the premises at which the Services are principally to be performed;”</p> <p>2. Clause 5.5 of the Conditions shall be deleted and replaced with the following:</p> <p>“Unless otherwise agreed in writing by the Buyer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Deliverables. The Supplier accepts that under the Contract only Reimbursable Expenses are recoverable. Reimbursable Expenses may only be recovered where:</p> <p>(a) Paragraph 10 of the Order Form states that recovery is permitted;</p> <p>(b) the Reimbursable Expenses incurred by the Supplier in the performance of the Contract are pre-approved by the Buyer; and</p> <p>(c) the Reimbursable Expenses are supported by supporting documentation.”</p> <p>3. Clause 15 (Data Protection) shall be deleted in its entirety and replaced with the following:</p> <p>“15.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 3 (Authorised Processing of Personal Data).</p>
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	<p>15.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.</p> <p>15.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send UKEF copies on request.</p> <p>15.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system and complies with the Security Policy (if applicable) and any applicable Security Management Plan.</p> <p>15.5 If, at any time, the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify UKEF and immediately suggest remedial action.</p> <p>15.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable UKEF may either or both:</p> <ul style="list-style-type: none"> • tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that UKEF receives notice, or the Supplier finds out about the issue, whichever is earlier; • restore the Government Data itself or use a third party. <p>15.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless UKEF is at fault.</p> <p>15.8 The Supplier:</p> <ul style="list-style-type: none"> • must provide UKEF with all Government Data in an agreed open format within 10 Working Days of a written request; • must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading; • must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice; • must securely and promptly delete or return the Government Data except where required to retain copies by law or regulation or for its own internal audit, back-up or legal defence reasons; • indemnifies UKEF against any and all Losses incurred if the Supplier breaches Clause 15 (Data Protection) and any Data Protection Legislation." <p>4. Clause 27 shall be deleted and replaced with the following:</p> <p>"27.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties."</p>
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18. Supplemental Terms	Not Applicable.
19. Commercially Sensitive Information	Not Applicable.
20. Progress Reporting	Not Applicable.

Execution of the Contract is carried out in accordance with the Electronic Communications Act 2000 and the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/89) (the UK eIDAS Regulation).

Unless agreed otherwise by the Buyer, each Party agrees to sign this Order Form by electronic signature using DocuSign and agree that this method of signature is as conclusive of their intention to be bound by this Order Form and the Contract as if signed by each Party's manuscript signature.

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name: [Redacted] Partner Varella & Advogados Associados	Name: [Redacted] Director of Legal and Compliance (Interim) UK Export Finance
Date: 28/02/23	Date: 01/03/23
Signature: [Redacted]	Signature: [Redacted]

Short Form Conditions

1. DEFINITIONS USED IN THE CONTRACT

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

"Auditor"	means: <ul style="list-style-type: none"> a) the Buyer's internal and external auditors; b) the Buyer's statutory or regulatory auditors; c) the comptroller and auditor general, their staff and/or any appointed representatives of the National Audit Office; d) HM Treasury or the Cabinet Office; e) any party formally appointed by the Buyer to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Buyer"	means the person identified in the Order Form;
"Buyer Cause"	means any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, or agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Central Government Body"	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: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Charges"	means the charges for the Deliverables as specified in the Order Form;
"Commercially Sensitive"	means the Confidential Information listed in the Order Form comprising of the Supplier's commercially sensitive

Information”	<p>information relating to:</p> <ul style="list-style-type: none"> a) the pricing of the Services; b) details of the Supplier’s IPR; c) the Supplier’s business and investment plans; and/or d) the Supplier’s trade secrets; <p>which the Supplier has indicated, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Compliance Officer”	means the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Conditions”	means these terms and conditions and includes the Schedules;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier counter signing the Order Form and includes the Order Form, Short Form Conditions and Schedules;
“Contracts Finder”	means the Government’s publishing portal for public sector procurement opportunities;
"Controller"	has the meaning given to it in the UK GDPR;
“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation"		means: (i) the UK GDPR, and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
"Data Protection Officer"		has the meaning given to it in the UK GDPR;
"Data Event"	Loss	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
"Data Subject"		has the meaning given to it in the UK GDPR;
"Data Access Request"	Subject	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;
"Date Delivery"	of	means the date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
"Deliver"		means the hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed between the Parties. Delivery is completed once the Deliverables are unloaded. "Delivered" , "Deliveries" and "Delivery" shall be construed accordingly;
"Deliverables"		means the Goods and/or Services supplied under the Contract as set out in the Order Form;
"DocuSign"		means the e-signature software nominated by the Buyer for execution of the Contract;
"EIR"		means the Environmental Information Regulations 2004;
"Existing IPR"		means any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
"Expiry Date"		means the date for expiry of the Contract as set out in the Order Form;
"FOIA"		means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the

Information Commissioner's Office or relevant Government department in relation to such legislation;

"Force Majeure Event"	means any reasonably unforeseeable event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier's or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure or delay caused by a lack of funds;
"Goods"	means the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	means: <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner's Office"	means the UK's independent authority which upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals;
"Insolvency Event"	means: <ul style="list-style-type: none"> (a) in respect of a person, if that person is insolvent or becomes subject to a bankruptcy petition or enters into any

form of arrangement with their creditors; and

(b) in respect of a company or partnership,

- i) if an order is made or a resolution is passed for the winding up of the company or partnership (other than voluntarily for the purpose of solvent amalgamation or reconstruction);
- ii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the assets or business;
- iii) if the business makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;

“IPR”	means all intellectual property rights (whether registered or not) in any jurisdiction including but not limited to copyrights, moral rights, related rights, patents, utility models, trademarks, trade names, service marks, registered designs, design rights, rights in computer software, database rights, rights in undisclosed or confidential information such as know-how, trade secrets and inventions (whether patentable or not);
“IR35”	means the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/ir35-find-out-if-it-applies ;
“Jaggaer”	means the Buyer’s nominated e-procurement system;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
“Key Subcontractor”	<p>means any Subcontractor:</p> <ul style="list-style-type: none"> a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or b) which, in the opinion of the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or 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 the Contract, <p>and the Supplier shall list all such Key Subcontractors in</p>

paragraph 15 of the Order Form;

“Law”	means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 4(1) of the EU Withdrawal Act 2018 as amended by the EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Losses”	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and “Loss” shall be interpreted accordingly;
“Modern Slavery Action Plan”	means a detailed remedial and/or mitigation plan submitted by the Supplier and agreed by the Buyer, which sets out the action the Supplier will take, during the Term, to remedy and/or mitigate any modern slavery issues;
"New IPR"	means all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract that does not include the Supplier's Existing IPR;
"Order Form"	means the Order Form provided by the Buyer to the Supplier printed above these Conditions;
"Party"	means the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the UK GDPR;
"Personal Data Breach"	has the meaning given to it in the UK GDPR;
“Processor”	has the meaning given to it in the UK GDPR;
“Prohibited Act”	means: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or

a reward for improper performance of a relevant function or activity in connection with the Contract; or

c) committing any offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or

ii) under legislation or common Law concerning fraudulent acts; or

iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or

d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures”

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by the Supplier

“Publishable Performance Information”

means the key performance indicators used by the Buyer to measure the Supplier’s performance of the Services during the Term which the Buyer may publish in accordance with clause 18.2;

“Purchase Order Number”

means the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;

“Regulations”

means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;

“Reimbursable Expenses”

means the reasonable out-of-pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer’s travel and subsistence policy set out at Schedule 4, as updated and notified to the Supplier from time to time, but not including:

(a) travel expenses incurred as a result of the Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and

(b) subsistence expenses incurred by the Supplier Staff whilst performing the Services at their usual place of

work, or the premises at which the Services are principally to be performed;

"Request Information"	for	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Security Policy"		means the Buyer's security policy, referred to in paragraph 16 of the Order Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time by the Buyer and notified to the Supplier;
"Services"		means the services to be supplied by the Supplier to the Buyer under the Contract;
"SME"		means any business with fewer than 250 employees and either an annual turnover below £45m or a total balance sheet less than £40m". It might be worth updating this definition so that they align across DIT's template documents;;
"SME Management Information Reports"		has the meaning set out in clause 26.5;
"Specification"		means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in Schedule 1 (Specification of Legal Services) ;
"Staff Vetting Procedures"		means vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Start Date"		means the date specified in paragraph 8 of the Order Form;
"Storage Media"		means the part of any device that is capable of storing and retrieving data;
"Subprocessor"		means any third party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Sub-Contractor"		means any third party engaged by the Supplier in relation to the provision of the Deliverables under the Contract;
"Supplier Staff"		means all directors, officers, employees, agents, consultants

and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under the Contract;

"Supplier"	means the person named as Supplier in the Order Form;
"Supply Chain Map"	<p>means details of the supply chain for the Deliverables, as set out in the Specification, which may include:</p> <ul style="list-style-type: none"> (a) The name, registered office and company registration number of each entity of the Supplier and all known Sub-contractor(s); (b) The function of each entity in the supply of the Deliverables; and (c) The location of any premises at which an entity in the supply chain carries out a function in the supply of the Deliverables;
"Term"	means the period from the Start Date set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the terms and conditions of the Contract;
"Transparency Information"	has the meaning set out in clause 18.1 of the Contract;
"UK GDPR"	means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679) as transposed into UK Law by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	<p>means any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees)</p> <p>(https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and</p>
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. UNDERSTANDING THE CONTRACT

In the Contract, unless the context otherwise requires:

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

3. WHEN THE CONTRACT BEGINS

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 By signing this Contract the Supplier agrees to register on Jaggaer and to communicate with the Buyer during the Term in accordance with clause 28 (How to communicate about the Contract).
- 3.4 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of the Deliverables are and remain true and accurate.

4. WHAT NEEDS TO BE DELIVERED AND HOW

4.1 All Deliverables

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a competent professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all Law.

- (b) The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects (or longer where the Supplier offers a longer warranty period to its Buyers).

4.2 **Goods clauses**

- (a) All Goods Delivered must be new, or as new if recycled, unused and of recent origin unless expressly agreed in writing by both Parties.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on Delivery, except if the Buyer notices damage following Delivery and informs the Supplier within three Working Days of the Date of Delivery, in which case the Supplier remains responsible. The Supplier is responsible for insuring the Goods until Delivery.
- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must Deliver the Goods on the date and to the specified location on the Order Form during the Buyer's working hours, unless otherwise specified on the Order Form.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- (h) All Deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods. The Buyer may reject the Deliverables if no delivery note is attached.
- (i) The Supplier must provide all such access (including passwords and serial keys), tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer as soon as possible of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) The Buyer can cancel (i) any order or part order of Goods within 14 days of placing the order, or (ii) any order or part order, which has not been Delivered within 14 days of any specified Date of Delivery. If the Buyer cancels an order within 14 days' notice of placing it or within 14 days of the specified Date of Delivery, then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to mitigate its costs.
- (l) The Supplier must, at its own cost, repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with any part of this clause 4.2. If the Supplier doesn't do this it will indemnify the Buyer for its costs of repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or some other

wrongful act of the Buyer or its servants or agents. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its Supplier Staff.

4.3 **Services clauses**

- (a) Late Delivery of the Services will be a default of the Contract.
- (b) The Supplier must cooperate with the Buyer and third-party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or its third-party suppliers including the Security Policy set out in the Order Form and other any security or health and safety requirements.
- (c) Where applicable, the Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services.
- (d) The Supplier must, at its own risk and expense, provide all equipment required to Deliver the Services except where the Buyer and the Supplier agree otherwise. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and all equipment used to supply the Services, are well maintained, of good quality and free from defects.
- (i) Without prejudice to any other rights and remedies under the Contract, the Buyer is entitled to withhold payment for partially Delivered or undelivered Services.

5. **PRICING AND PAYMENTS**

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the Charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days of the Services being Delivered.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
 - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account details stated in on the invoice.

- 5.4 A Supplier invoice is only valid if it:
- (a) includes all appropriate references, including the Purchase Order Number and other details reasonably requested by the Buyer; and
 - (b) includes a detailed breakdown of Deliverables which have been Delivered (if any).
- 5.5 Unless otherwise agreed in writing by the Buyer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Deliverables. The Supplier accepts that under the Contract only Reimbursable Expenses are recoverable. Reimbursable Expenses may only be recovered where:
- (a) Paragraph 10 of the Order Form states that recovery is permitted;
 - (b) the Reimbursable Expenses incurred by the Supplier in the performance of the Contract are in accordance with the Buyer's Travel and Subsistence Policy set out in Schedule 4; and
 - (c) the Reimbursable Expenses are supported by supporting documentation in accordance with Schedule 4.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount within the agreed timeframe. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. The Parties shall attempt to resolve any conflict relating to disputed amounts through the dispute resolution procedure detailed in clause 36.
- 5.7 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 5.8 The Supplier must ensure that all Sub-contractors are paid in full within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment by the Supplier to its Sub-contractors.

6. THE BUYER'S OBLIGATIONS TO THE SUPPLIER

- 6.1 If the Supplier fails to comply with the Contract as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under the Contract;
 - (c) the Supplier is entitled to additional time needed to Deliver the Deliverables; and
 - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware of a Buyer Cause;

- (b) demonstrates that the failure only happened because of the Buyer Cause; and
- (c) mitigated the impact of the Buyer Cause.

7. RECORD KEEPING AND REPORTING

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract and in accordance with UK GDPR.
- 7.3 The Supplier must allow any Auditor appointed by the Buyer reasonable access to their premises during normal office hours to carry out an audit.
- 7.4 The Supplier must provide information to the Auditor and provide reasonable co-operation at their request.
- 7.5 The Buyer, acting by itself or through its Auditor, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors with the Supplier's obligations under the Contract, which shall include, but not be limited to, verifying the accuracy, integrity and content of any financial report, reviewing any books of account and reviewing the internal management accounts kept by the Supplier in connection with the Contract.
- 7.6 If an audit undertaken pursuant to clause 7.5 identified that:
 - (a) the Supplier has failed to perform its obligations under the Contract, the Buyer may (without prejudice to any other rights and remedies the Buyer may have) require the Supplier to prepare a remedial plan for the Buyer's approval. When the Buyer receives a requested remedial plan (or revised remedial plan), it can either (a) reject the remedial plan (or revised remedial plan) giving reasons, or (b) accept the remedial plan (or revised remedial plan) and the Supplier must immediately implement the remedial plan at its own cost, unless agreed otherwise by the Parties; and/or
 - (b) the Buyer has overpaid any Charges, the Supplier shall pay the Buyer (i) the amount overpaid within 30 days and (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Buyer up to the date of repayment by the Supplier.
- 7.7 Without prejudice to any other rights which the Buyer may have under the Contract, where the remedial plan (or revised remedial plan) is rejected by the Buyer pursuant to clause 7.6(a), the Buyer may request that the Supplier provides a revised remedial plan within 5 Working Days and the Buyer shall consider the revised remedial plan in accordance with clause 7.6(a).

- 7.8 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action; and
 - (c) provide a deadline for completing the corrective action.
- 7.9 If the Supplier or any of its Key Sub-contractors experience, or suspect that it may experience, any financial instability which is likely to have an impact on the Supplier or its Key Sub-contractors' ability to perform the obligations under the Contract, the Supplier shall promptly notify the Buyer in writing of:
- (a) The risk or potential risk of financial instability, and details thereof; and
 - (i) The steps, if any, the Supplier plans to take to mitigate the risk of financial instability; or
 - (ii) The reasons why, the Supplier believes no steps need to be taken by the Supplier to mitigate the risk of financial instability.
- 7.10 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract (and the Supplier will make changes to such plan as reasonably required by the Buyer) and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on its progress with the plan on demand;
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on another date to be determined by the Buyer).

8. SUPPLIER STAFF

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
 - (b) be vetted using Good Industry Practice and in accordance with clause 8.2 below; and
 - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

- 8.3 Where a Buyer decides one of the Supplier Staff is not suitable to work on the Contract, the Supplier must immediately replace them with a suitably qualified alternative. The Buyer will, where possible, but is under no obligation to do so, provide the Supplier with a reason for the change subject to security and confidentiality considerations.
- 8.4 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach this clause 8.
- 8.5 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.6 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by any act or omission of the Supplier or any Supplier Staff.
- 8.7 The Supplier shall use the Key Personnel nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (approval of the request shall not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on parental leave or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Supplier or any Sub-contractor is terminated for material breach of contract.

9. RIGHTS AND PROTECTION

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and relevant authority to enter into and perform the Contract;
 - (b) the Contract has been executed by its authorised representative(s);
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
 - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
 - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
 - (g) it is not subject to or at reasonable risk of an Insolvency Event;
 - (h) no financial instability has occurred or is subsisting and there are currently no matters that it is aware of, relating to its financial stability, that could have a material adverse effect on its ability to perform the Contract.
 - (i) it has not been convicted of any slavery or human trafficking offence anywhere around the world;
 - (j) 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 offence anywhere around the world;

- 9.2 The Supplier agrees that the warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier and/or Supplier Staff that impacts the Contract; and
 - (b) non-payment by the Supplier of any tax or national insurance or other employer-based contributions.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third-party warranties and indemnities covering the Deliverables must, where possible, be assigned for the Buyer's benefit by the Supplier. Where assignment is not possible, the Supplier agrees to hold the warranties and indemnities on trust for the Buyer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier grants the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:
- (a) receive and use the Deliverables; and
 - (b) to the extent required to utilise the New IPR.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer grants the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in this clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier shall indemnify the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated, the Supplier must at its own expense and the Buyer's sole option, either:

- (a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party's IPRs; or
- (b) replace or modify the relevant item with substitutes that don't infringe IPRs without adversely affecting the functionality or performance of the Deliverables.

11. ENDING THE CONTRACT

11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract (or earlier if required by Law).

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

11.3 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days written notice and if terminated clause 11.5(a) to 11.5(g) applies.

11.4 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a termination notice in writing to the Supplier:
 - (i) the Supplier becomes subject to an Insolvency Event;
 - (ii) the Supplier repeatedly breaches the Contract in a way to reasonably justify, in the Buyer's opinion, that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (iii) the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier being notified by the Buyer of the breach and /or of the requirement for it to be remedied;
 - (iv) there is a change of ownership or control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which is not pre-approved by the Buyer in writing;
 - (v) the Buyer discovers that the Supplier was in one of the situations in Regulation 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (vi) a Court within the relevant jurisdiction declares that the Contract should not have been awarded to the Supplier because of a serious breach of the Regulations; or
 - (vii) any act or omission of the Supplier (or its employees or officers) or its affiliates (or its affiliate's employees or officers), in the reasonable opinion of the Buyer, embarrasses or brings the Buyer into disrepute or diminishes the public trust in them.
- (b) If any of the events in Regulation 73(1) (a) to (b) of the Regulations (substantial modification, exclusion of the Supplier) happen, the Buyer has the right to immediately terminate the Contract and clauses 11.5(a) to 11.5(g) apply.

11.5 What happens if the Contract ends

Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately as of the date of termination, except the obligation to pay any outstanding invoices or for Deliverables that have been supplied but not yet invoiced;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement of the Contract; and
- (g) the following clauses survive the termination of the Contract: 7.2, 9,10, 11, 15, 16, 17, 19, 37, 37 and any clauses which are expressly or by implication intended to continue.

11.6 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice. Interest under the Late Payment of Commercial Debts (Interest) Act 1998 shall apply to any outstanding undisputed invoices from the expiry of the 30-day period following the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.6(a):
 - (i) the Buyer must promptly pay all outstanding and undisputed Charges incurred to the Supplier;
 - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence (the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated); and
 - (iii) clauses 11.5(d) to 11.5(g) apply.

11.7 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 27) any necessary variation required by this clause 11.7, but the Supplier may not either:

- (i) Unreasonably reject the variation; or
- (ii) Increase the Charges, except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this clause 11.7.

12. HOW MUCH THE PARTIES CAN BE HELD RESPONSIBLE FOR

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
- (a) any indirect losses; or
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
 - (c) any liability that cannot be excluded or limited by Law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2 (l), 4.2(m), 8.6, 9.3, 10.5, 13.2, 15.26(e) or 33.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 The Supplier is fully responsible for both their own liabilities and the liabilities of any Sub-contractors and Supplier Staff.

13. OBEYING THE LAW

- 13.1 the Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its Sub-Contractors comply with the Supplier Code of Conduct appearing at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
 - (b) support the Buyer in fulfilling its public sector equality duty under s149 of the Equality Act 2010;
 - (c) not use nor allow its Sub-contractors to use modern slavery, child labour or inhumane treatment in accordance with clause 14;

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

13.2 The Supplier indemnifies the Buyer against any costs and expenses (including any professional and legal costs) resulting from any default by the Supplier relating to any applicable Law to do with the Contract.

13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with the Law, clause 13.1, 14 and clauses 30 to 35.

14. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

14.1 The Supplier shall:

- (a) within 60 days of the Start Date complete the [Modern Slavery Assessment Tool \(MSAT\)](#). Where the Supplier has completed a recent MSAT with another Government buyer as part of a separate procurement, and the MSAT was completed by the Supplier within 12 months of the Start Date, the Supplier shall be permitted to submit the relevant results and/or action plan to the Buyer as its MSAT for application under this Contract;
- (b) prepare and progress against an agreed Modern Slavery Action Plan, but only where completion of the MSAT has identified a Medium or High modern slavery risk;
- (c) (where applicable) within 6 months of the Start Date provide the Buyer with a Supply Chain Map in the form and manner set out in the Specification;
- (d) not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour;
- (e) not require any of its Supplier Staff to lodge deposits or identify papers with their employer, and its Supplier Staff shall be free to leave their employer after reasonable notice;
- (f) make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (g) have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
- (h) implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- (i) 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;

- (j) not use, nor allow Supplier Staff to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment, verbal abuse or other forms of intimidation of Supplier Staff;
- (k) not use, or allow, child or slave labour to be used by its Sub-contractors;
- (l) report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Buyer and the Modern Slavery Helpline. In this clause 14.1.(l) "**Modern Slavery Helpline**" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700; and
- (m) work openly and proactively with the Buyer to resolve any identified instances of slavery and/or trafficking and where appropriate, make any necessary changes to their working practices to mitigate the risk of slavery and/or trafficking.

15. DATA PROTECTION

- 15.1 For the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor.
- 15.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with the Contract.
- 15.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 15.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six months.
- 15.5 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy specified in the Order Form and any other security requirements specified by the Buyer from time to time.
- 15.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 15.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable, the Buyer may either or both:
 - (a) tell the Supplier to restore or get restored the Government Data as soon as practical (but no later than five Working Days from the date that the Buyer receives notice, or from the date that the Supplier finds out about the issue, whichever is earlier); and/or
 - (b) restore the Government Data itself or via a third party.

- 15.8 The Supplier must pay each Party's reasonable costs of complying with clause 15.7 unless the Buyer is at fault.
- 15.9 Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify this for the Contract using the template in Schedule 5 (*Authorised Processing of Personal Data*).
- 15.10 The Supplier must only process Personal Data if authorised to do so in Schedule 5 (*Authorised Processing of Personal Data*) by the Buyer. Any further written instructions relating to the processing of Personal Data shall be set out in Schedule 5.
- 15.11 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
 - (b) the necessity and proportionality of the processing operations;
 - (c) the risks to the rights and freedoms of Data Subjects; and
 - (d) the intended measures to address these risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 15.12 The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
- 15.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event. These Protective Measures must be approved by the Buyer.
- 15.14 If lawful, the Supplier must notify the Buyer if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 15.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Supplier's duties under this clause 15;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
 - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 15.16 The Supplier must not transfer Personal Data outside of the EU, other than to the Controller unless all of the following are true:
- (a) it has obtained prior written consent of the Buyer;
 - (b) the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);
 - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;

- (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
- (f) the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.

15.17 The Supplier must notify the Buyer immediately if it:

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

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

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

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

15.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 15. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:

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

- 15.21 If required by the Data Protection Legislation the Supplier must appoint a Data Protection Officer responsible for observing its obligations in this clause 15.
- 15.22 Before allowing any Subprocessor to process any Personal Data, the Supplier must:
- (a) notify the Buyer in writing of the intended Subprocessor and processing;
 - (b) obtain the written consent of the Buyer;
 - (c) enter into a written contract with the Subprocessor so that this clause 15 applies to the Subprocessor; and
 - (d) provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.
- 15.23 The Supplier remains fully liable for all acts or omissions of any Subprocessor.
- 15.24 At any time, the Buyer can, with 30 Working Days' notice to the Supplier, change this clause 15 to:
- (a) replace it with any applicable standard clauses (between the Controller and Processor) or similar terms forming part of an applicable certification scheme under UK GDPR Article 42; and/or
 - (b) ensure it complies with guidance issued by the Information Commissioner's Office.
- 15.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 15.26 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
 - (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - (d) must securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and
 - (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 15 and/or any Data Protection Legislation.

16. WHAT THE PARTIES MUST KEEP CONFIDENTIAL

- 16.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of its Confidential Information.
- 16.2 In spite of clause 16.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

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

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

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

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament; and
- (e) under clauses 5.8 and 18.

16.5 For the purposes of clauses 16.2 to 16.4, references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this clause 16.

16.6 Information which is exempt from disclosure by clause 17 is not Confidential Information.

16.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

17. WHEN THE SUPPLIER CAN SHARE INFORMATION

17.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

- 17.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request; and
 - (b) comply with any Environmental Information Regulations (EIR) request.

18. WHEN THE BUYER MAY SHARE INFORMATION

18.1 The Parties acknowledge that:

- (a) the contents of the Contract (including any changes to the Contract agreed from time to time) except for:
 - any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
 - Commercially Sensitive Information
 - and
- (b) the Publishable Performance Information (together the “**Transparency Information**”) are not Confidential Information.

18.2 Notwithstanding any other provision of the Contract, the Supplier hereby gives its consent for the Buyer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform the Buyer of its decision regarding any redactions but the Buyer shall have the final decision in its absolute discretion.

18.3 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Transparency Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

18.4 The Buyer may talk to the Supplier to help the Supplier decide whether to publish information under this clause 18. However, the extent, content and format of the disclosure is the Buyer’s decision, which does not need to be reasonable.

18.5 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information.

19. INVALID PARTS OF THE CONTRACT

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

20. NO OTHER TERMS APPLY

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

21. OTHER PEOPLE'S RIGHTS IN THE CONTRACT

No third party may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

22. CIRCUMSTANCES BEYOND THE PARTIES' CONTROL

- 22.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- (a) provides written notice to the other Party; and
 - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 22.2 Either Party can partially or fully terminate the Contract immediately by issuing a termination notice in writing to the other Party if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 22.3 Where a Party partially or fully terminates the Contract under clause 22.2:
- (a) each Party must cover its own losses;
 - (b) the Buyer's payment obligations under the Contract will be suspended to the extent corresponding to the Supplier's inability to deliver its obligation under the Contract as a result of a Force Majeure Event; and
 - (c) clauses 11.5(a) to 11.5(g) apply.

23. RELATIONSHIPS CREATED BY THE CONTRACT

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

24. GIVING UP CONTRACT RIGHTS

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

25. TRANSFERRING RESPONSIBILITIES

- 25.1 The Supplier cannot assign the Contract without the Buyer's written consent.
- 25.2 The Buyer can assign, novate or transfer the Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 25.3 When the Buyer uses its rights under clause 25.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 25.4 The Supplier can terminate the Contract where the Contract is novated under clause 25.2 to a private sector body that is experiencing an Insolvency Event.
- 25.5 If the Buyer asks the Supplier for details about Sub-contractors, the Supplier must provide details of Sub-contractors at all levels of the supply chain including:
 - (a) their name;
 - (b) the scope of their appointment; and
 - (c) the duration of their appointment.

26. VISIBILITY OF SUB-CONTRACT OPPORTUNITIES IN THE SUPPLY CHAIN AND SME CONTRACT SPEND

- 26.1 The Supplier shall:
 - (a) subject to clause 26.3, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Term;
 - (b) within 90 days of awarding a sub-contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - (c) monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - (d) provide reports on the information at clause 26.1(c) to the Buyer in the format and frequency as reasonably specified by the Buyer; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 26.2 Each advert referred to at clause 26.1(a) shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

- 26.3 The obligation on the Supplier set out at clause 26.1(a) shall only apply in respect of sub-contract opportunities arising after the Contract has been signed by both Parties.
- 26.4 Notwithstanding clause 26.1, the Buyer may, by giving its prior approval, agree that a sub-contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

Visibility of SME/Supply Chain Spend

- 26.5 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, upon the request of the Buyer and at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Buyer which shall include:
- (a) the total contract revenue received directly on the Contract;
 - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-voluntary, community and social enterprises (“**VCSEs**”)); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 26.6 The SME Management Information Reports shall be provided by the Supplier in the format required by the Buyer and any guidance issued by the Buyer from time to time. The Supplier agrees and acknowledges that the Buyer may vary the information it requires to be included in the SME Management Information Reports (including the data required and/or format). The Buyer agrees to give at least thirty (30) days’ notice in writing of any such variation and shall specify the date from which it must be provided.

27. CHANGING THE CONTRACT

- 27.1 Either Party can request a variation to the Contract which they shall initiate by issuing a Change Control Notice set out in Schedule 3 of the Contract. The Buyer is not required to accept a variation requested by the Supplier and no changes will be effective until a Change Control Notice has been signed by both Parties.

28. HOW TO COMMUNICATE ABOUT THE CONTRACT

- 28.1 All notices under the Contract must be in writing which means the notice will not be valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery), by email or by communication via Jaggaer.
- 28.2 All notices are considered effective on the Working Day the notice is received as long as they are received before 5:00pm on a Working Day (otherwise the notice will be effective on the next Working Day). An email or communication via Jaggaer is effective when sent on a Working Day (otherwise the notice will be deemed effective on the next Working Day).

28.3 Notices to the Buyer or Supplier must be sent to the postal or email addresses specified in the Order Form.

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

29. PREVENTING FRAUD, BRIBERY AND CORRUPTION

29.1 The Supplier shall not:

- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
- (b) commit a Prohibited Act.

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

29.3 If the Supplier and/or Supplier Staff engage in conduct prohibited by clause 29.1 (which includes committing fraud in relation to the Contract or any other contract with a Crown Body (including the Buyer)), the Buyer may:

- (a) terminate the Contract and in accordance with clause 11.5 (a) recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
- (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

30. EQUALITY, DIVERSITY AND HUMAN RIGHTS

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

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

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

31. HEALTH AND SAFETY

- 31.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable Law regarding health and safety; and
 - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 31.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Buyer's premises that relate to the performance of the Contract.

32. ENVIRONMENT

- 32.1 When working on site, the Supplier must perform its obligations under the Buyer's current Environmental Policy specified in the Order Form.
- 32.2 The Supplier must ensure that Supplier Staff are aware of and comply with the Buyer's Environmental Policy when performing their obligations under the Contract.

33. TAX

- 33.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement with HMRC to pay any late contributions due including, where applicable, any interest or fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 33.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay national insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
 - (b) indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 33.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 33.2, or why those requirements do not apply. The Buyer can specify the information the Worker must provide and the deadline for responding;

- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers insufficient to demonstrate how it complies with clause 33.2 or confirms that the Worker is not complying with those requirements; and
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management purposes.

34. CONFLICT OF INTEREST

- 34.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 34.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 34.3 The Buyer can terminate the Contract immediately by giving notice in writing to the Supplier or take any steps it thinks necessary where there is or may be an actual or potential conflict of interest. If the Contract is terminated under this clause 34.3 clause 11.5 shall apply.

35. REPORTING A BREACH OF THE CONTRACT

- 35.1 As soon as it is aware of it, the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of Law, clause 13.1, or clauses 29 to 34.
- 35.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 35.1.

36. RESOLVING DISPUTES

- 36.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 36.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 36.3 to 36.5.

- 36.3 Unless the Buyer refers the dispute to arbitration using clause 36.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
 - (b) grant interim remedies; and
 - (c) grant any other provisional or protective relief.
- 36.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 36.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 36.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 36.4.
- 36.6 The Supplier cannot suspend the performance of the Contract during any dispute.

37. WHICH LAW APPLIES

- 37.1 This Contract and any issues arising out of, or connected to it, are governed by English Law and the English courts have exclusive jurisdiction.

SCHEDULE 1 – SPECIFICATION OF LEGAL SERVICES

- (i) Acting on behalf of UKEF during all the litigation stages of the judicial reorganization of Engenharia, Manutenção e Preservação Ambiental S.A. (the “TSL”), including lower court, State Court of Appeals and Superior Court of Appeals in Brazil;
- (ii) Attending general creditors meetings;
- (iii) Filing the competent motion informing the bankruptcy court of the assignment and transference of the loan from Sovereign Star Trading Finance to UKEF in order to implement the respective step-in of UKEF as TSL’s recorded creditor;
- (iv) Monitoring the payments to be carried out by TSL directly to UKEF in accordance with the terms and conditions of the approved reorganization plan; and
- (v) Rendering a final statement/legal opinion confirming that the assignment and the registration of the loan have been recorded/approved by the competent bankruptcy court.

SCHEDULE 2 - CHARGES

VLAW will receive the success fees of 15% (fifteen percent) of any amounts received by UKEF in connection with the repayment of the TSL's loan and will be billed and paid monthly or in any other periodicity corresponding to TSL's repayment obligations.

SCHEDULE 3 – AUTHORISED PROCESSING OF PERSONAL DATA

Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each Party under the DPA. A Party may act as:
 - (a) “Controller” in respect of the other Party who is “Processor”;
 - (b) “Processor” in respect of the other Party who is “Controller”;
 - (c) “Joint Controller” with the other Party;
 - (d) “Independent Controller” of the Personal Data where there other Party is also “Controller”,

in respect of certain Personal Data under the Contract and shall specify in Schedule 3A (*Authorised Processing*) which scenario they think shall apply in each situation.

Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 3A (*Authorised Processing*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- (a) Process that Personal Data only in accordance with Schedule 3 (*Authorised Processing of Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 15 of the Conditions, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Schedule 3A (*Authorised Processing*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Schedule 3, Clauses 15 (*Data protection*), 16 (*What the Parties must keep confidential*) and 17 (*When the Supplier can share information*) of the Conditions;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

- (d) not transfer Personal Data outside of the UK or European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
 - (v) the Controller and the Processor agree that without any further action being required they have entered into the ICO's standard contractual clauses¹ in respect of the processing of Personal Data outside of the UK and the European Economic Area.
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
6. Subject to paragraph 7 of this Schedule 3, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;

¹ [International data transfer agreement and guidance | ICO](#)

- (e) 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
 - (f) becomes aware of a Personal Data Breach.
7. The Processor's obligation to notify under paragraph 6 of this Schedule 3 shall include the provision of further information to the Controller, as details become available.
8. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Schedule 3 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 3. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) 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
 - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Subprocessor and Processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 3 such that they apply to the Subprocessor; and
 - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
14. UKEF may, at any time on not less than 30 Working Days' notice, revise this Schedule 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. UKEF may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

16. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement an agreement that is necessary to comply with UK GDPR Article 26.

Independent Controllers of Personal Data

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 17 of this Schedule 3, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
 - (a) to the extent necessary to perform their respective obligations under the Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
 - (c) where it has recorded it in Schedule 3A (*Authorised Processing*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data

provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:

- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Schedule 3A (*Authorised Processing*).

27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Schedule 3A (*Authorised Processing*).
28. Notwithstanding the general application of paragraphs 2 to 15 of this Schedule 3 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 17 to 27 of this Schedule 3.
29. In the event that both Parties are Controllers of the Personal Data and for the purposes of the Services the Personal Data will be transferred outside of the UK and the European Economic Area the Parties agree:
- 29.1. that without any further action being required they have entered into the ICO's standard contractual clauses² in respect of data transfers by the Supplier outside of the UK and the European Economic Area;
- 29.2. to use best endeavours to complete the annexes to the standard contractual clauses promptly and at their own cost for the purpose of giving full effect to them; and
- 29.3. that if there is any conflict between the Contract and the standard contractual clauses the terms of the standard contractual clauses shall apply.

² [International data transfer agreement and guidance | ICO](#)

SCHEDULE 3A – AUTHORISED PROCESSING

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

- 1.1 The contact details of the Buyer's Data Protection Officer are:
 [Redacted]
 Information Access Team
 UK Export Finance
 1 Horse Guards Road
 London
 SW1A 2HQ
 Email: information.access@ukexportfinance.gov.uk
- 1.2 The contact details of the Supplier's Data Protection Officer are:
 [Redacted]
 Partner
 Varella & Advogados Associados
 Estrada União e Indústria, nº 10.673, Grupo G, Itaipava,
 Petrópolis, Rio de Janeiro, Brazil
 Zip Code: 25.730-740
- 1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details of Supplier Personnel for which the Supplier is the Controller, • Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant UKEF Personnel (excluding the Supplier Personnel) engaged in the performance of UKEF's duties under the Contract) for which UKEF is the Controller, • Business contact details of any directors, officers, employees, agents, consultants and contractors of TSL,

	<ul style="list-style-type: none"> • staff of third parties to the proceeding.
Duration of the Processing	From the Start Date to the Expiry Date
Nature and purposes of the Processing	<p>Any collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose is for the provision of legal services</p>
Type of Personal Data	Name, address, e-mail address, telephone number, images
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers
Plan for return and destruction of the data once the processing is complete UNLESS requirement under Law to preserve that type of data	Minimum of seven years from the Expiry Date