

# Order Form

<b>1. Contract Reference</b>	847	
<b>2. Date</b>		
<b>3. Buyer</b>	Secretary of State for Health and Social Care acting as part of the Crown 39 Victoria Street Westminster London SW1H 0EU	
<b>4. Supplier</b>	Northumbrian Water Limited Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ  02366703	
<b>5. The Contract</b>	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any <i>Annexes</i>.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
<b>6. Deliverables</b>	Goods	None
	Services	To be performed in accordance with Annex 2 – Specification hereto.
<b>7. Specification</b>	The specification of the Deliverables is as set out in Annex 2 – Specification	

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<b>8. Term</b>	<p>The Term shall commence on 14<sup>th</sup> February 2021</p> <p>and the Expiry Date shall be 31<sup>st</sup> March 2022, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Buyer may extend the Contract for two (2) periods of up to twelve (12) months each by giving not less than 15 Working Days notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>
<b>9. Charges</b>	<p>The Charges for the Deliverables shall be as set out in Annex 3 - Charges</p>
<b>10. Payment</b>	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to email: [REDACTED] and copied to [REDACTED]</p> <p>Within 20 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You 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 and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to [REDACTED]</p>
<b>11. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be [REDACTED]</p> <p>or, in their absence, [REDACTED]</p>

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<b>12. Address for notices</b>	<div> <div>Buyer:</div> <div>Supplier:</div> </div> <div> <div>Department of Health and Social Care</div> <div>Northumbrian Water Limited</div> </div> <div> <div>[REDACTED]</div> <div>[REDACTED]</div> </div> <div> <div>[REDACTED]</div> <div>[REDACTED]</div> </div>
<b>13. Key Personnel</b>	<div> <div>Buyer:</div> <div>Supplier:</div> </div> <div> <div>[REDACTED]</div> <div>[REDACTED]</div> </div> <div> <div>[REDACTED]</div> <div>[REDACTED]</div> </div> <div> <div>[REDACTED]</div> <div>[REDACTED]</div> </div>
<b>14. Procedures and Policies</b>	n/a

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name: [REDACTED] Wastewater Director	Name: [REDACTED] Deputy Director
Date: 28 July 2021	Date: 02 Aug 2021
Signature: [REDACTED]	Signature: [REDACTED]

## **Annex 1 – Authorised Processing Template**

Not applicable

## Annex 2 – Specification

### 1.0 BACKGROUND

- 1.1 The Buyer requires the Supplier to provide wastewater sampling activities, as further described below, at a number of locations within the region in which the Supplier operates.
- 1.2 This provision will include retrospective activity and activity up to 31/03/21 and ongoing activity on a monthly basis from 01/04/21 forward.
- 1.3 There are two primary locations for wastewater sampling:
  - 1.3.1 Manholes in urban or community-based locations currently in scope, or that are part of either the Mass Testing or community-based pilots. These now form the 'Core Cities' workstream of the Governments Wastewater Programme in response to COVID 19.
  - 1.3.2 Treatment centres, typically at primary inlet points for those sites currently in scope. Forty-four waste treatment centres were initially mobilised for sampling at the commencement of the Wastewater Programme in August 2020, and now form the 'National Surveillance' workstream of the Governments Wastewater Programme in response to COVID 19.

## **2.0 DETAILED SPECIFICATION**

### **2.1 SAMPLING REQUIREMENTS**

#### **2.1.1 Sampling Timing**

- 2.1.1.1 Samples are to be collected at morning peak flow and Grab samples shall be taken during the hours of 0800hrs to 1200hrs each day.
- 2.1.1.2 Samples will be collected on every day of the year (365 days) for the duration of the contract unless by formal agreement with the Buyer.
- 2.1.1.3 In the event that, for unforeseen and unagreed circumstances, this is not possible, then the Buyers Authorised Representative shall be informed, in writing or via email , by 1700hrs on the working day upon which the delay occurred and subsequently reported formally as defined in section 4.0.
- 2.1.1.4 If used, Autosamplers need to be set to take a representative 24-hour flow capture. The composite sample should be of 24 equal samples collected over the designated 24-hour period and refrigerated during the sampling period. The 24-hour time period sampled each time by the composite sampler should remain consistent throughout the duration of service.

#### **2.1.2 Core Cities (Manholes/Pumping Stations/Urban locations)**

- 2.1.2.1 The Supplier shall provide suitable resource or resources with suitable transportation, a temperature controlled cool box and all sampling equipment not defined as outwith Supplier Scope in Clause 2.3 below to undertake the required activities.
- 2.1.2.2 Resources shall be provided in the required numbers to deliver the sampling services at the locations detailed in the '*Master Core Cities List*' as defined in Annex 3 and to the requirements of Clauses 2.1.1, 2.1.2.3 & 2.1.2.4.

##### **2.1.2.3 Sampling Frequency**

- 2.1.2.3.1 Collection of samples will be on a seven day a week basis on Monday, Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday.

##### **2.1.2.4 Sampling Method**

- 2.1.2.4.1 Sampling method shall be agreed in writing between the Supplier and Buyer for all sampling points and methods prior to undertaking the activities detailed here and will be subject to section 3.0.

### **2.1.3 National Surveillance (Treatment Centres)**

- 2.1.3.1 The Supplier shall agree with the Buyer a suitable method and resource structure team to undertake the activities in support of the sampling at Treatment Centres which will include the provision of a temperature controlled cool box and all sampling equipment not defined as outwith Supplier Scope in Clause 2.3 below to undertake the required activities.
- 2.1.3.2 Resource teams shall be provided in the required numbers to deliver the sampling services at the locations detailed in *the 'Master Treatment Centre List'* as defined in Annex 3 and to the requirements of Clauses 2.1.1, 2.1.3.3 & 2.1.3.4.

#### **2.1.3.3 Sampling Frequency**

- 2.1.3.3.1 Collection of samples will be on four days a week basis on Monday, Wednesday, Friday and Sunday.

#### **2.1.3.4 Sampling Method**

- 2.1.3.4.1 Sampling method shall be agreed in writing between the Supplier and Buyer for all sampling points and methods prior to undertaking the activities detailed here and will be subject to section 3.0.
- 2.1.3.4.2 Composite samples should be taken at the inlet of the wastewater treatment plant, after the screening and grit removal steps (if possible), at a point that is well-mixed.
- 2.1.3.4.3 In the event that composite sampling, the preferred method of sample collection at Treatment Centres, is interrupted or not possible (due to sampler malfunction, Urban Wastewater Sampling requirements, etc.) a grab sample (as per Clause 2.1.3.3.1) will be provided instead (if morning peak flow has not been missed) and this recorded on the provided sampling form.
- 2.1.3.4.4 If a composite sample is not possible and a grab sample is outside the timings defined in Clause 2.1.1 then a grab sample will be taken, and the process outlined in Clause 2.1.1.3 adopted.

### **2.1.4 Bottling, Labelling & Storage**

- 2.1.4.1 Bottle supply is defined in 2.3.1. below.
- 2.1.4.2 Samples will need to be labelled and made ready for collection, as per 2.3.2 below.
- 2.1.4.3 The buyer will provide to the Supplier, as necessary or requested, process documentation for the identification and labelling of samples dependent upon whether these samples are going to UK Laboratories or being sent to Commercial Partner Laboratories.

- 2.1.4.4 The location to which samples are to be sent for analysis will be agreed in writing with the Buyer and is subject to change under section 3.0.

## **2.2 SAMPLING SITES**

- 2.2.1 Tables defining Core Cities (Manholes/Pumping Stations/Urban Locations ) Sampling Sites and Treatment Centres (National Surveillance) are defined in Annex 3 as Version 1.0 of those tables..
- 2.2.2 The 'Master Core Cities List' and 'Master Treatment Centre List', their contents and current versions are maintained and updated by the Buyers Authorised Representative. Any changes or updates to the 'Master Core Cities List' or 'Master Treatment Centre List' will be formally communicated and agreed with the Supplier including, but not limited to, any subsequent variations to cost or timings of the deliverables identified here.

## **2.3 DELIVERABLES OUTWITH SUPPLIER SCOPE**

### **2.3.1 Sourcing of Bottles or Labels**

- 2.3.1.1 Bottles and Labels are, and will be, provided by the Buyer's delivery partner, the Environment Agency (EA), and are, and will be, sent to a location agreed between the Supplier and the Buyer from where the Supplier will distribute, as necessary, in support of their activities.
- 2.3.1.2 The Supplier will inform the Buyer of any issues, such as shortage, defects or other conditions that may affect the Suppliers ability to fulfil their obligations at the earliest opportunity of such conditions occurring.
- 2.3.1.3 These arrangements are the responsibility of the Buyers Authorised Representative and the Technical Services Team at the EA

### **2.3.2 Transport of Samples to Laboratories**

- 2.3.2.1 Samples will be transported to laboratories in the UK or the EU via 3rd party courier services and/or the EA with arrangements being the responsibility of the Buyers Authorised Representative and the Technical Services Team at the EA and will be formally communicated to the Supplier as and when required as per Section 3.0.
- 2.3.2.2 The Supplier will ensure that all samples are correctly labelled, stored and ready for collection at a point agreed between the Supplier and Buyer and any change(s) to the collection requirements will be agreed between the Buyer and Supplier prior to any changes being made.



**3.0 CHANGE MANAGEMENT** Changes, formally communicated to the Supplier by the Buyers Authorised Representative, may include, but are not limited to:

- 3.1.1 Changes from one sampling method to another
- 3.1.2 Addition or removal of sites from scope
- 3.1.3 Changes to communicated timelines due to demands on lab capacity and/or dependencies with other Delivery Partners
- 3.1.4 Changes to sample handling, recording, methods of delivery of bottles and collection of samples
- 3.2 The Buyer will endeavour to provide as much notice as possible on any proposed changes and will work collaboratively to agree and achieve optimal outcomes.

**4.0 GOVERNANCE / WAYS OF WORKING**

- 4.1 The Buyer will agree in writing with the Supplier the provision, via an agreed format that the Buyer will define subject to Section 3.0, frequency and channel, of accurate progress reports which shall include as a minimum:
  - 4.1.1 highlights of significant accomplishments during the reporting period;
  - 4.1.2 summary information of work and progress achieved throughout the reporting period; and,
  - 4.1.3 details of any corrective actions taken / to be taken by the Supplier.
- 4.2 Progress report shall be submitted on a weekly basis to the Buyers Authorised Representative by 1700hrs on a Monday to cover activities of the preceding reporting period.
- 4.3 The Buyer and the Supplier shall meet formally on a monthly basis to review the site sampling data from the past month and to review expected forecast for the next month and agree invoicing for the previous month.

## Annex 3 – Scope of works

### Network Locations – Manholes/Pumping Stations/Urban Locations (as at 04/03/2021)

#### Master Core Cities List – Version 0.2

city	Site Code	Site Name	Sample Type	Sample Start Date
Newcastle	NW-BKR	Newcastle - Byker	Grab Sample	TBC
Newcastle	NW-BTN	Newcastle - Benton	Grab Sample	TBC
Newcastle	NW-BWL	Newcastle - Benwell	Grab Sample	TBC
Newcastle	NW-CIT	Newcastle - Newcastle City	Grab Sample	TBC
Newcastle	NW-DTV	Newcastle - Denton Valley	Grab Sample	TBC
Newcastle	NW-GFH	Newcastle - Gosforth	Grab Sample	TBC
Teesside	NW-HPC	Hartlepool Central	Grab Sample	22 January 2021
Teesside	NW-HPH	Hartlepool Headland	Grab Sample	22 January 2021
Teesside	NW-HPN	Hartlepool North	Grab Sample	22 January 2021
Teesside	NW-HPS	Hartlepool South	Grab Sample	22 January 2021
Newcastle	NW-HTN	Newcastle - Heaton	Grab Sample	TBC
Teesside	NW-HTW	Hartlepool Seaton Carew TW	Composite Sample	18 January 2021
Newcastle	NW-JES	Newcastle - Jesmond	Grab Sample	TBC
Newcastle	NW-LOB	Newcastle - Lower Ouseburn	Grab Sample	TBC
Newcastle	NW-NBN	Newcastle - Newburn	Grab Sample	TBC
Newcastle	NW-PTL	Newcastle - Ponteland	Grab Sample	TBC
Newcastle	NW-SVY	Newcastle - Seaton Valley	Grab Sample	TBC
Newcastle	NW-WKR	Newcastle - Walker	Grab Sample	TBC
Newcastle	NW-WLD	Newcastle - Wallsend	Grab Sample	TBC

**Treatment Centres – National Surveillance (as at 04/03/2021)**

## Master Treatment Centre List - Version 0.2

Site Name	Latitude	Longitude	Code	Sample Type	Start Date
Hartlepool	TBC	TBC	UKENNE_NU_TP000046	Composite/Auto sampler	TBC
HORDEN AND PETERLEE	54.77666298	-1.315956809	UKENNE_NU_TP000030	Composite/Auto sampler	TBC
WASHINGTON	54.89497332	-1.490141597	UKENNE_NU_TP000055	Composite/Auto sampler	TBC
NEWCASTLE (Howdon)	54.99106911	-1.476421702	UKENNE_NU_TP000031	Composite/Auto sampler	10th Feb 2021
MIDDLESBOROUGH (Bran sands)	54.60887353	-1.132672953	UKENNE_NU_TP000012	Composite/Auto sampler	10th Feb 2021
DARLINGTON (stressholm)	54.49828568	-1.554996908	UKENNE_NU_TP000051	Composite/Auto sampler	10th Feb 2021
NEWTON (acliffe)	54.60381884	-1.562361638	UKENNE_NU_TP000003	Composite/Auto sampler	10th Feb 2021
CONSETT	54.88903082	-1.850641689	UKENNE_NU_TP000019	Composite/Auto sampler	17th Feb 2021
CRAMLINGTON	55.11090211	-1.581608129	UKENNE_NU_TP000020	Composite/Auto sampler	17th Feb 2021
BISHOP AUCKLAND (vinovium)	54.67887463	-1.683143673	UKENNE_NU_TP000054	Composite/Auto sampler	17th Feb 2021
BILLINGHAM	54.62445112	-1.259036822	UKENNE_NU_TP000009	Composite/Auto sampler	17th Feb 2021

## Annex 4 – Charges

### 1.0 GENERAL

- 1.1 For the satisfactory performance of the Services, as may be determined by the Buyer (acting reasonably) in accordance with the Contract, the Buyer shall reimburse the Supplier in accordance with the rates and prices specified in this Annex 5 Schedule of Costs
- 1.2 The rates and prices specified in this Section shall be deemed as all-inclusive and to allow for all costs incurred by the Supplier in complying with the terms and conditions of the Contract, and shall represent the total remuneration due to the Supplier in full consideration of the satisfactory performance of the Services.
- 1.3 In the event that additional personnel, equipment or Supplier supplied materials are requested by the Buyer, rates and prices for such Good and/or Services shall be agreed in writing between the Buyer and the Supplier prior to the commencement of Services specified in each purchase order.
- 1.4 The Buyer shall not accept the Supplier's invoices for Services where rates and prices have not been agreed in writing between the parties either in Annex 4 or via a subsequent amendment to the Contract prior to the commencement of Services.
- 1.5 Any lump sum rates and prices, unless specified to the contrary, shall include but not be limited to the following:
  - 1.5.1 The provision of all direct, indirect, productive and non-productive labour, supervision and management including all wages, salaries and associated payroll costs (including but not limited to overtime, National Health Insurance, private health plan, pensions, employers liability or other insurance, sickness benefit, holidays, bonus and all costs of crew changeovers). This shall further include non-productive time such as meal / tea breaks and time required to travel to and from the worksite;
  - 1.5.2 Provision and maintenance of the Supplier's HSE and QA Systems;
  - 1.5.3 The Supplier shall not be entitled to remuneration in respect of personnel or equipment time incurred non-productively:
    - 1.5.3.1 Through shortages or delays in the supply by the Supplier of personnel, equipment, information or materials, provided that the Buyer shall have given to the Supplier adequate notice of the need for such supply; and / or
    - 1.5.3.2 Due to a lack of planning of part of the Supplier.
- 1.6 No reimbursement will be made for Services which are not performed in accordance with the Contract;
- 1.7 The Buyer shall reimburse the Supplier in British Pounds Sterling (GBP);
- 1.8 The rates and prices are exclusive of any incidence for Value Added Tax ("VAT") applicable to the Goods and Services provided by the Supplier under the Contract. The amount of VAT chargeable thereon shall be paid to the Supplier by the Buyer in

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addition to any other payments becoming due under the Contract upon production of a valid tax invoice;

- 1.9 The Contact Charges shall be calculated in accordance Annex 3 - Charges for each purchase order which shall include the following:

1.9.1 All lump sums, unit rates and prices whether conducted on milestone, reimbursable or cost-plus basis;

1.9.2 Any changes to the purchase order by virtue of any approved variations.

## 2.0 SCHEDULE OF RATES

### 2.1 Rates

2.1.1 Two type of costs will be acceptable for payment by the Buyer for activities undertaken by the supplier.

#### 2.1.2 Sampling Costs

2.1.2.1 Sampling Costs will be broken down into line items for National Surveillance Sampling Costs and Core Cities Sampling costs against substantiated invoices.

2.1.2.2 Line items will be the cost of a suitably qualified and trained person, persons or team complete with transport as required, temperature controlled cool boxes and any necessary sampling equipment for the sampling of the required location(s)

#### 2.1.3 Additional Costs

2.1.3.1 Supplier additional costs, which will need to be agreed formally between the Supplier and Buyer in support of Sampling activities, and sampling activities alone, prior to invoicing and against substantiated invoices.

2.1.4 In support of sampling at locations defined in the Master Core Cities List sites and the Master Treatment Centre List as detailed Annex 3 hereto, the Supplier shall be reimbursed against the Sampling and Additional costs which shall be submitted in a format that will contain, as a minimum, the items identified in Table 1 below.

2.1.5 The Buyer may request a more detailed breakdown of costs to identify the costs of sampling a specific point, location or locations over a period and the Supplier should ensure they are able to supply such a level of detail if requested.

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Line Item	Description	Unit/Description	Rate/Cost	Total Cost
1	Sampling Costs under National Surveillance	Cost per sample	Rate	Total Cost
2	Sampling Costs under Core Cities	Cost per sample	Rate	Total Cost
3	Additional Cost (1)	Description	Cost	Cost
4	Additional Cost (2)	Description	Cost	Cost
n	Additional Cost (n)	Description	Cost	Cost
			TOTAL	

Table 1

## Annex 5 – Schedule of Costs and Rates

### 1.0 GENERAL

- 1.1 This section identifies the full costs to be reimbursed to the Supplier, both historic and future, provided by the supplier for the delivery of services defined here within.

### 2.0 PROCESS FOR REIMBURSEMENT OF SUPPLIER

In consideration for provision of the Services in accordance with the contract, the Buyer shall reimburse the Supplier as follows:

#### 2.1 Historic Services (14<sup>th</sup> February 2021 – 31<sup>st</sup> March 2021)

For Services provided between the dates above, the Supplier shall be reimbursed a lumpsum of [REDACTED] exclusive of VAT. This lumpsum shall represent full and final settlement of costs incurred by Supplier and its subcontractors up to the 31st March 2021.

#### 2.2 Provision of Services from 1st April 2021

2.2.1 In discussions with the Supplier, the Buyer has produced a baseline forecast cost for the time period 1st April 2021 – 31st March 2022. This forecast, in addition to the lumpsum detailed in Clause 2.1, represents the limit of liability of £344,502.00 exclusive of VAT under the Contract. This baseline does not represent a sum for reimbursement. Supplier shall be reimbursed in Clauses, 2.1, 2.2.2 and 2.2.3.

2.2.2 The Buyer shall be reimbursed at the actual costs incurred in the preceding month. The costs shall be calculated using the relevant sample cost detailed in Annex 4 – and shall include any subsequent changes agreed between the Supplier and the Buyer as defined within Clause 3.0 and as updated between the Parties.

2.2.3 Where a sample collection is missed due to default of Supplier and/or its subcontractor, the Supplier shall not be reimbursed for that sample. However, where a sample cannot be collected due to factors outwith Supplier and/or its subcontractor, the Supplier shall be reimbursed in accordance with the Contract.

2.2.4 Each invoice submitted by Supplier shall include, but not be limited to:

- i. A copy of the list of current sites and sampling collected during the period;
- ii. Where a sample has not been collected, the Supplier shall provide details of the reason for failure; and Reference to the purchase order

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**3.0 SCHEDULE OF COSTS AND RATES**

	FY 20/21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21
Sampling Cost							

	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	FY 21/22
Sampling Cost							



# Short form Terms

## 1. Definitions used in the Contract

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

<b>"Central Government Body"</b>	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: 1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non-Ministerial Department; or 4. Executive Agency;
<b>"Charges"</b>	means the charges for the Deliverables as specified in the Order Form;
<b>"Confidential Information"</b>	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;
<b>"Contract"</b>	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
<b>"Buyer"</b>	means the person identified in the letterhead of the Order Form;
<b>"Date of Delivery"</b>	means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
<b>"Buyer Cause"</b>	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, the LED 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;
<b>"Deliver"</b>	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause 4, Delivered and Delivery shall be construed accordingly;

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<b>"Existing IPR"</b>	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);
<b>"Expiry Date"</b>	means the date for expiry of the Contract as set out in the Order Form;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the workforce of either Party, the Party's staff (including any subsets of them) or any other failure in the Party's or their subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
<b>"UK GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679) as adopted into English law under the European Union (Withdrawal) Act 2018 and as supplemented by the Data Protection Act 2018;
<b>"Goods"</b>	means the goods to be supplied by the Supplier to the Buyer under the Contract;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government Data"</b>	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Insolvency Event"</b>	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or

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	administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
<b>"Key Personnel"</b>	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"New IPR"</b>	Any and all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>"Order Form"</b>	means the letter from the Buyer to the Supplier printed above these terms and conditions;
<b>"Party"</b>	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR;
<b>"Purchase Order Number"</b>	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;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>"Request for Information"</b>	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);
<b>"Services"</b>	means the services to be supplied by the Supplier to the Buyer under the Contract;
<b>"Specification"</b>	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	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;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;

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<b>"Supplier"</b>	means the person named as Supplier in the Order Form;
<b>"Term"</b>	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause 24 r terminated in accordance with the terms and conditions of the Contract;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Workers"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday or public holiday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

In the Contract, unless the context otherwise requires:

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

## 3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.

- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## **4. What needs to be delivered**

### **4.1 All Deliverables**

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

### **4.2 Goods clauses**

- (a) Not used

### **4.3 Services clauses**

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (i) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

### **4.4 Ownership of Samples**

In relation to any and all samples collected by or on behalf of the Supplier under this Contract (each a "Sample" and together, the "Samples"), the Parties agree as follows:

- a) The Buyer shall retain sole ownership of the Samples; and
- b) The Supplier shall not own any rights, title or interest in the Samples and waives any rights it may have obtained.

The Supplier shall, and shall procure that any person engaged by it shall, do all acts and execute all documents which may be necessary to give full effect to the provisions of this Clause 4.4.

## 5. Pricing and payments

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the Charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
  - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
  - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
  - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
- 5.6 Not used.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 40 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non payment.

## 6. The Buyer's obligations to the Supplier

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

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

## **7. Record keeping and reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - (a) tell the Buyer and give reasons;
  - (b) propose corrective action;
  - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
  - (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

## **8. Supplier staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
  - (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice
  - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Not used
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.

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- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
  - (b) the person concerned resigns, retires or dies or is on maternity or long term sick leave; or
  - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

## 9. Rights and protection

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
  - (b) the Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
  - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 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, any of its subcontractor and/or Supplier Staff that impacts the Contract;
  - (b) non payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must notify the Buyer without undue delay.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## 10. Intellectual Property Rights (IPRs)

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty free, irrevocable, transferable worldwide licence



to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:

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

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

10.3 The Supplier hereby assigns to the Buyer with full guarantee and free from all third party rights, the New IPR and all other rights subsisting in New IPR.

10.4 The assignment set out in Clause 10.3 shall either take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the New IPR, as appropriate.

10.5 The Supplier shall waive or procure a waiver of any moral rights in the New IPR assigned to the Buyer under this Contract.

10.6 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.

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

10.8 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 intellectual property rights;
- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

## 11. Ending the contract

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

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

### 11.3 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 11.5(b) 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 its Contract by issuing a termination notice in writing to the Supplier:

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- (i) there's a Supplier Insolvency Event;
  - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre approved by the Buyer in writing;
  - (v) if the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
  - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
  - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(b) to 11.5(g) applies.

**11.5 What happens if the Contract ends****11.6 Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:**

- (a) not used;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately, except with regards to all Services supplied by the Supplier up to and including the date of termination;
- (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 the Buyer's sole cost and expense, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re procurement;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

**11.6 When the Supplier can end the Contract**

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the

total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

- (b) The Buyer embarrasses or brings the Supplier into disrepute or diminishes the public's trust in them.
- (c) If a Supplier terminates the Contract under clause 11.6(a) or (11.6(b):
  - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
  - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
  - (iii) clauses 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 24) any necessary variation required by clause 11.7, but the Supplier may not either:
  - (i) reject the variation;
  - (ii) increase the Charges, except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

## 12. How much you can be held responsible for

12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.

12.2 No Party is liable to the other for:

- (a) any indirect losses;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

12.3 In spite of clause 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 subcontractors;
- (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
- (c) any liability that cannot be excluded or limited by law.

- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
- 12.5 Each Party must use all commercially reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

### 13. Obeying the law

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
  - (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
  - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
  - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
  - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 13.2 The Supplier indemnifies the Buyer against any costs to the extent that they result from any default by the Supplier relating to any applicable law to do with the Contract.
- 13.3 The Supplier shall identify members of Supplier Staff who shall be Compliance Officers who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32. For the avoidance of doubt, no single person employed by the Supplier is solely responsible for such compliance.
- 13.4 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

### 14. Data protection

- 14.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off site location and send the Buyer copies every six Months.
- 14.3 The Supplier must ensure that any Supplier system holding any Government Data, including back up data, is a secure system that complies with the security requirements specified [in writing] by the Buyer.

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- 14.4 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 14.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
  - (b) restore the Government Data itself or using a third party.
- 14.6 The Supplier must pay each Party's reasonable costs of complying with clause 14.7 unless the Buyer is at fault.
- 14.7 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request (including upon termination or expiry of this Contract);
  - (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
  - (d) securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
  - (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 14 and any Data Protection Legislation.

## 15. What you must keep confidential

- 15.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
  - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
  - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
  - (c) if the information was given to it by a third party without obligation of confidentiality;
  - (d) if the information was in the public domain at the time of the disclosure;

- (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
  - (f) to its auditors or for the purposes of regulatory requirements;
  - (g) on a confidential basis, to its professional advisers on a need-to-know basis;
  - (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - (d) where requested by Parliament;
  - (e) under clauses 5.7 and 16.
- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 Neither Party shall make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the other Party and each Party must take all reasonable steps to ensure that their staff do not either.

## **16. When you can share information**

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request;
  - (b) comply with any Environmental Information Regulations (EIR) request.
- 16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

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

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

## **18. No other terms apply**

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

## **19. Other people's rights in a contract**

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

## **20. Circumstances beyond your control**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- (a) provides written notice to the other Party;
  - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under clause 20.2:
- (a) each party must cover its own losses;
  - (b) clause 11.5(b) to 11.5(g) applies.

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

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

## **22. Giving up contract rights**

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

## **23. Transferring responsibilities**

- 23.1 The Supplier cannot assign the Contract without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

- 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
  - (b) the scope of their appointment;
  - (c) the duration of their appointment.

## **24. Changing the contract**

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

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

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

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

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



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

## 27. Equality, diversity and human rights

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

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

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

## 28. Health and safety

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

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

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

## 29. Environment

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

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

## 30. Tax

30.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

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

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
  - (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 30.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
  - (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 30.2 or confirms that the Worker is not complying with those requirements;
  - (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **31. Conflict of interest**

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

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

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1, or clauses 26 to 31.
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

## **33. Resolving disputes**

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

## 34. Which law applies

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