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| DATED | 2016 |

(1) The Information Commissioner

- and -

(2) [The Supplier]

|  |  |  |
| --- | --- | --- |
|  | Agreementfor the supply of research services relating to the embedding of information rights into further education**Contract Reference Number: 2016ICO00075** |  |

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This AGREEMENT is made on 2016

BETWEEN:

(1) THE INFORMATION COMMISSIONER (a corporation sole appointed by Her Majesty the Queen) whose head office is at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (**"Commissioner"**).

(2) [                     ] [a company registered in [England and Wales] with company number [           ] whose registered office is at [                  ]] **OR** [of [                    ]] (**"Supplier"**).

**INTRODUCTION**

**A** The Commissioner would like the Supplier to undertake a research project (Phase 1) into the higher/further education landscape and produce a detailed report. The research will explore ways to embed information rights into different types of courses and recommend methods and materials to be used to do so. If the Commissioner chooses to follow the recommendations he would like the Supplier to develop and supply the methods and materials (Phase 2).

**B** The reports will facilitate the Commissioner’s regulatory responsibility to uphold individuals’ privacy rights and educate the general public about those right, in this case by facilitating learning in the higher and further education environment.

**C** The Supplier has the necessary skills and resources to undertake Phase 1 and Phase 2 for the Commissioner and agrees to do so on the terms set out in this Agreement.

**IT IS AGREED** as follows:

section a - preliminaries

# Definitions and Interpretation

## In this Agreement the definitions set out in Schedule 1 (Definitions) shall apply.

## The interpretation and construction of this Agreement shall be subject to the following provisions:

### words importing the singular meaning include where the context so admits the plural meaning and vice versa;

### words importing the masculine include the feminine and the neuter;

### reference to a clause is a reference to the whole of that clause unless stated otherwise;

### references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

### references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

### the words **"include"**, **"includes"** and **"including"** are to be construed as if they were immediately followed by the words **"without limitation"**; and

### headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

## In the event of, and only to the extent of, any conflict between the clauses of this Agreement, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

### the clauses of this Agreement and Schedule 1 (Definitions);

### Schedule 2 (Project Requirements);

### any other Schedules and their annexes; and

### any other document referred to in the clauses or Schedules of this Agreement.

# DUE DILIGENCE

1. The Supplier acknowledges that it:

## has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Commissioner;

## has raised all relevant due diligence questions with the Commissioner before the Commencement Date;

## has entered into this Agreement in reliance on its own due diligence alone; and

## has full power and authority under its constitution and has taken all necessary actions and obtained all licences, consents and approvals to allow it to enter into this Agreement.

section B - delivery of the Project

# PROJECT

## The Supplier shall perform the tasks allotted to it and shall deliver the requirements in accordance with Schedule 2 (Project Requirements) and in accordance with the timetable and deadlines and the terms and conditions of this Agreement.

## The Supplier will provide the human resources, materials, facilities and equipment that are necessary to complete those tasks.

## The Commissioner may from time to time clarify the detail of the subject matter and of the desired outcome of the Project and provide guidance on the Project and such guidance shall form part of the Project, provided that such clarification and/or guidance will not (i) have a material impact on the Supplier; (ii) involve the Supplier incurring any additional costs; nor (iii) require a change to this Agreement.

## The Supplier shall provide the Commissioner with monthly reports summarising the progress of the Project.

# DELIVERY AND ACCEPTANCE OF PHASE 1 PROJECT

## The Supplier shall deliver the Phase 1 Project and the Phase 1 Report by the dates set out in Schedule 2.

## Upon completion of the Phase 1 Project, the Supplier shall deliver the Phase 1 Report to the Commissioner and notify him that it is ready for Acceptance. Following the receipt of the Phase 1 Report the Commissioner shall within 10 Business Days evaluate the report and shall notify the Supplier in writing that he considers that it:

### satisfies the requirements of clause 3.1 and the Supplier's obligations as set out in clause 5.2 (the **"Acceptance"**); or

### contains defects and does not comply with this Agreement.

## Any defect notification from the Commissioner to the Supplier referred to in clause 4.2.2 above shall be remedied to the Commissioner’s reasonable satisfaction with 15 Working Days after the receipt of that notification or such other period as the parties may reasonably agree in writing.

## Following the re-submission of the Phase 1 Report which the Commissioner regards as having satisfied his research requirements the Parties shall work together to develop a version which complies with the Commissioner’s style guide. The Commissioner shall have full editorial control over the final version of the Phase 1 Report prior to publication on the Commissioner’s website.

## If following resubmission of the Phase 1 Report the research again fails to achieve Acceptance, the Commissioner shall at its sole discretion have right to:

### reject the report and use the materials created by the Supplier up to the date of that failure in order to complete or procure from a third party completion of the Phase 1 Report pursuant to clause 76.2; or

### terminate the agreement immediately in accordance with clause 43 (*Termination*) for the Supplier's material breach.

## Upon any rejection or termination under clause 4.5, the Supplier shall refund to the Commissioner any payments paid to it by the Commissioner and the Supplier shall return any materials or documentation delivered to the Supplier and/or created in relation to the Phase 1 Project or the Phase 1 Report to the Commissioner and, if requested by the Commissioner, the Supplier shall cooperate with the Commissioner and/or any third party nominated by the Commissioner under clause 4.5.1 for the purposes of completing the Phase 1 Project.

## If the Commissioner does not wish to continue into Phase 2 he will notify the Supplier in writing as soon as reasonably possible after Acceptance of the Phase 1 Report.

## If the Commissioner does wish to continue into Phase 2 he will notify the Supplier in writing which Supplier recommendations the Commissioner wishes the Supplier to deliver as the Phase 2 Project by the dates set out in Schedule 2 and the Supplier shall deliver them.

## Upon completion of the Phase 2 Project, the Supplier shall deliver the solutions and materials to the Commissioner and notify him that the Phase 2 requirements are ready for Acceptance. The Commissioner shall within 10 Business Days evaluate the materials and solutions provided by the Supplier and shall notify the Supplier in writing that he considers that they:

## 4.9.1 satisfy the Commissioner’s requirements and the Supplier's obligations as set out in clause 5.2 (the "Acceptance"); or

##  4.9.2 contains defects and does not comply with this Agreement

#

## Any defect in solutions or materials provided by the Supplier shall be remedied to the Commissioner’s reasonable satisfaction within 15 Working Days after the receipt of the notification in clause 4.9.2 or such other period as the parties may reasonably agree in writing.

## Following the re-submission of the Phase 2 solutions and materials the Commissioner shall within 10 Working Days evaluate them and shall notify the Supplier in writing that it considers that they:

### satisfy the requirements of Phase 2 and the Supplier's obligations as set out in clause 5.2 (the **"Acceptance"**); or

### continues to contain defects and does not comply with this Agreement.

## If following resubmission of the Phase 2 solutions and materials they again fail to achieve Acceptance the Commissioner shall at its sole discretion have right to:

### use the materials created by the Supplier up to the date of that failure in order to complete or procure from a third party completion of Phase 2 pursuant to clause 6.2;

### accept in any event what has been produced and deduct from any monies due, or claim a refund of any monies paid, an amount the Commissioner considers fair and reasonable; or

### terminate the Agreement immediately in accordance with clause 43 (*Termination*) for the Supplier's material breach.

## Upon any rejection or termination under clause 4.5, the Supplier shall refund to the Commissioner any payments paid to it by the Supplier and the Supplier shall return any materials or documentation delivered to the Supplier and/or created in relation to Phase 2 to the Commissioner and, if requested by the Commissioner, the Supplier shall cooperate with the Commissioner and/or any third party nominated by the Commissioner for the purposes of completing Phase 2.

# PARTIES' GENERAL OBLIGATIONS

## The Commissioner shall:

### co-operate and liaise with the Supplier and provide such information, assistance and consents to the Supplier as are within its powers and are reasonably necessary to enable the Supplier to deliver the Phase 1 Project and, if required by the Commissioner, the Phase 2 Project;

### appoint the Commissioner Representative, who shall be the Supplier's first point of contact in respect of both Phase 1 and Phase 2 and notify the Supplier of the contact details of the Commissioner Representative.

## The Supplier shall:

### co-operate with the Commissioner in all matters relating to this agreement;

### discharge its obligations under this agreement using personnel of requisite skill, experience and qualifications and with all due skill, care and diligence;

### obey all instructions from the Commissioner relating to the completion and conduct of Phase 1 Project and, if required, Phase 2 provided that the Commissioner shall not give any instructions which in its reasonable opinion would be likely significantly to hinder the Supplier in completing either phase;

### consult and liaise with third parties as and when necessary or reasonably required by the Commissioner;

### keep and make available to the Commissioner accurate records of all research, development and other work carried out in connection with the Phase 1 Project or the Phase 2 Project, copies of any or all materials and documents and any data under the Supplier's control which is or has been produced or used in connection with either Project and all results and observations, signed by the people who obtained each result or made those observations.

# GOOD FAITH

1. Both parties hereby agree that in the performance of their obligations and the exercise of their rights under this agreement and the Phase 1 Project and the Phase 2 Project, including but not limited to the exercise of their discretion where required so to do, they will at all times act in good faith and, in the case of the Commissioner, reasonably in a manner appropriate to its status as a statutory body with public functions. Without prejudice to the generality of the foregoing, the Commissioner's overriding consideration in making decisions in respect of either Project shall be the need to ensure, within the terms of this agreement, that the relevant Project is performed successfully.

##

SECTION c - payment

# charging and invoicing

## Without prejudice to its rights under clause 4.5.2 (Reduction of Contract Price) and 10 (Recovery of Sums Due), in consideration of the Supplier's performance of its obligations under this Agreement, the Commissioner shall pay the Contract Price to the Supplier in accordance with the payment profile and invoicing procedure specified in Schedule 3 (Pricing and Invoicing).

## The Supplier shall not suspend the delivery of either the Phase 1 Project or the Phase 2 Project unless the Supplier is entitled to terminate this Agreement pursuant to clause 39.4 (Termination by the Supplier) for failure to pay undisputed sums of money.

## Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

## The Supplier shall keep complete and accurate accounts of all its expenditure on the Phase 1 Project and the Phase 2 Project.

# tax

## The Contract Price is stated exclusive of VAT, which if applicable, shall be added at the prevailing rate as applicable by Law and paid by the Commissioner to the Supplier or Her Majesty's Revenue and Customs (**"HMRC"**) (as applicable) following Receipt of a valid UK VAT invoice.

## The Supplier shall indemnify the Commissioner on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Commissioner at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 9.2 shall be paid by the Supplier to the Commissioner not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Commissioner.

# Recovery of Sums Due

1. The Commissioner may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement.

# Euro Compliance

## Any requirement of Law to account for the delivery of the Phase 1 or Phase 2 Project in Euros (or to prepare for such accounting), instead of and/or in addition to pounds sterling, shall be implemented by the Supplier free of charge to the Commissioner.

## The Commissioner shall provide all reasonable assistance to facilitate compliance with clause 11.1 by the Supplier.

SECTION D - Contract governance

# supply chain rights

## The Supplier shall not sub-contract any of its obligations under this Agreement without prior Approval, such Approval not to be unreasonably withheld or delayed (subject to the provisions of clause 12.2).

## The Commissioner may withhold or delay its consent where it considers that:

### the appointment of a proposed sub-contractor may prejudice the delivery of the Phase 1 Project or the Phase 2 Project or may be contrary to the interests of the Commissioner; and/or

### the proposed sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or

### the proposed sub-contractor employs unfit persons.

## The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

## Where the Commissioner has consented to the placing of sub-contracts, copies of each sub-contract shall, at the reasonable request of the Commissioner, be sent by the Supplier to the Commissioner as soon as reasonably practicable.

# Audit

## For the purposes of the examination and certification of the Commissioner's accounts or any examination (pursuant if appropriate to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof, or any equivalent legislation) of the economy, efficiency and effectiveness with which the Commissioner has used its resources, the Commissioner's statutory auditors may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanations as they consider necessary provided that the carrying out of an examination, if appropriate, under section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof, or under any equivalent legislation, in relation to the Supplier is not a function exercisable under this clause.

## Except where an audit is imposed on the Commissioner in accordance with clause 13.1 or the Supplier is in Default (in which case the Commissioner may undertake the audits it deems to be necessary), the Commissioner may, not more than twice in any calendar year and for a period of 12 Months following the end of the Term, conduct an audit to:

### verify the accuracy of the Contract Price; and/or

### check the Supplier's compliance with the provisions of this Agreement, including clauses 24 (Protection of Personal Data) and 25 (Freedom of Information).

## Without prejudice to clauses 13.1 and 13.2, the Commissioner may carry out audits of the Supplier's quality management systems (including its compliance with the Quality Standards and any quality manuals and procedures) at regular intervals throughout the Term.

## The Commissioner shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an audit. However, the Commissioner shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the delivery of the Project.

## Subject to the Commissioner's obligations of confidentiality, the Supplier shall on demand co-operate, and shall procure that its sub-contractors co-operate, with the Commissioner (and/or its agents or representatives) in relation to each audit, including by providing the Commissioner with:

### all information requested by the Commissioner within the permitted scope of the audit; and

### access to the Staff.

## The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Commissioner for all the Commissioner's reasonable costs incurred in the course of the audit.

# records

1. The Supplier shall keep and maintain until six (6) years after the end of the Term, or such other period as may be agreed between the Parties, full and accurate records of this Agreement, including the Project delivered under it, together with all information as described in clauses 5.2.5, all expenditure reimbursed by the Commissioner and all payments made by the Commissioner. The Supplier shall on request afford the Commissioner or the Commissioner's representatives such access to those records as may be requested by the Commissioner in connection with this Agreement.

# Contract Change Procedure

1. No amendment to the provisions of this Agreement shall be effective unless agreed in writing by the Supplier and the Commissioner.

# Dispute Resolution

## Subject to the provisions of clause 16.2, any dispute arising under, or in connection with this Agreement shall be dealt with in accordance with this clause 16 (Dispute Resolution), and neither the Commissioner nor the Supplier may commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this clause 16 (Dispute Resolution) have been exhausted.

## Clause 16.1 shall be without prejudice to the rights of termination stated in clause 39 (Termination Rights) and in addition shall not prevent the Commissioner or the Supplier from applying for injunctive relief in the case of:

### breach or threatened breach of confidentiality;

### infringement or threatened infringement of its Intellectual Property Rights; or

### infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Commissioner or the Supplier to liability.

## All disputes between the Commissioner and the Supplier arising out of or relating to this Agreement shall be referred by ***[Commissioner representative to be confirmed]*** or ***[Supplier representative to be confirmed]*** to the other for resolution in the first instance.

## If any dispute cannot be resolved pursuant to the provisions of clause 16.3 within 10 Working Days, that dispute shall be referred to the ***[Commissioner's second point of contact to be confirmed]*** and ***[Supplier's second point of contact to be confirmed]*** for resolution.

## If the dispute cannot be resolved pursuant to clause 16.4, the parties will refer the dispute to a suitably qualified and experienced expert for determination (**"Expert"**). Such Expert shall be approved by both parties in writing and the Expert's determination shall (in the absence of being negligent or otherwise breaching the terms of his appointment) be final and binding on the parties.

section E - personnel

# Staff

## The Supplier shall ensure that all Staff involved in delivering the Projects shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper delivery of the Projects.

## The Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises including any requirements imposed pursuant to clause 32 (Security).

# KEY PERSONNEL

1. [***"Key Personnel" for the delivery of the Project are to be identified in Part 1 of Schedule 2).***]

## The Parties have agreed to the appointment of the Key Personnel as at the Commencement Date. The Supplier shall, and shall procure that any sub-contractor shall, obtain Approval before removing or replacing any member of the Key Personnel from their corresponding role during the Term, and reasonable written notice must be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.

# EMPLOYMENT INDEMNITY

1. The Supplier shall indemnify the Commissioner against all Employee Liabilities that may arise as a result of any claims brought against the Commissioner by any of the Commissioner's employees or former employees and/or any of the Staff where such claim arises from any act or omission of the Supplier or any Staff.

# Health and Safety

## Whilst on the Premises, the Supplier shall comply with any health and safety measures implemented by the Commissioner in respect of its Staff and other persons working there.

## The Supplier shall notify the Commissioner immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

## The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Agreement.

## The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Commissioner on request.

# EQUALITY AND DIVERSITY

## The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

## The Supplier shall take all reasonable steps to secure the observance of clause 21.1 by all Staff and sub-contractors employed in the execution of this Agreement.

# NON-SOLICITATION

1. The Commissioner and the Supplier shall not, and the Supplier shall procure that any sub-contractor shall not, during the Term and for 6 Months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other Party any person employed by such other Party in the delivery of the Project or (in the case of the Commissioner) in the receipt and/or administration of the Project.

section f - Intellectual property, data and Confidentiality

# INTELLECTUAL PROPERTY RIGHTS

## The Supplier, the Commissioner and Developed IPRs shall be subject to the following provisions:

### All Commissioner IPRs shall remain the property of the Commissioner. This will include all rights in any source material supplied by the Commissioner to the Supplier. The Commissioner grants to the Supplier for the duration of the Agreement, a non-exclusive, royalty free licence to use and reproduce any Commissioner IPRs to enable the Supplier to perform its obligations under this agreement. In the event that the Supplier wishes to sublicense the rights it must consult with the Commissioner who will consider each request on a case by case basis.

### Any Supplier IPRs shall remain the property of the Supplier. The Supplier grants to the Commissioner a perpetual non-exclusive royalty free licence (with the right to sub-licence) to use and reproduce all Supplier IPRs howsoever the Commissioner may consider that necessary in relation to the Project and/or any successor project and for the purposes referred to in clause 23.3 below.

### Where any IPRs are owned by a third party (**"Third Party IPRs"**) and are required to be used in the Project the Supplier shall procure that such rights are assigned to the Commissioner before any use is made of the Third Party IPRs or, in any event, before the final Due Date. The Commissioner may accept, as an alternative to any assignment, a perpetual royalty free licence (with the right to sub-licence) to use and reproduce all Third Party IPRs howsoever the Commissioner may consider that necessary in relation to the Project and/or any successor project and for the purposes referred to in clause 23.3 below on such reasonable terms as the Commissioner shall agree.

### All Developed IPRs which are developed or created by the Supplier (including without limitation the Phase 1 Report and the Phase 2 solutions and materials) shall be made freely available under the Open Government Licence or similar open licence such as Creative Commons. The Supplier shall not be entitled to exercise any lien or right of set-off or have a set off claim over or in respect of any materials to the extent that they contain any Developed IPRs.

### The Supplier undertakes at the request of the Commissioner at all times from the date of this agreement to, and to procure that any and all of its sub-contractors and any third party involved in the Project shall take all reasonable and necessary steps to assist the Supplier and Commissioner in registering, maintaining and enforcing all Developed IPRs in accordance with clause 22.1.4.

## The Supplier shall waive its own moral rights for any materials (whether Supplier IPRs or Developed IPRs) to be used or incorporated in materials produced or adapted for the purposes of this Agreement.

## The Supplier shall use its best endeavours to procure that both its sub-contractors and any third party whose materials are used in the Project waive their moral rights. If the Commissioner requests, the Supplier will provide written evidence of all such waivers.

## As part of any licence obtained by the Commissioner pursuant to this Agreement the Commissioner will be permitted to use Supplier IPRs or Third Party IPRs in relation to the Project and any successor project in the following ways:

### in relation to any and all specific arrangements for publications whether in electronic, hard copy or other media and whether accessible through any website or distributed in any territory; and

### in other circumstances where the Commissioner reasonably requires to use the Supplier or Third Party IPRs in which case the Commissioner will give the Supplier notice of its requirements and will, at all times, act reasonably in its further use of such rights.

## The Supplier must obtain the Commissioner's prior written consent to the use (including use by any of its Personnel) of the Commissioner's name, style or logo and shall not itself or encourage or assist anyone in any other way to represent or give the impression that it is, or may in any way, be connected or associated with the Commissioner.

# Protection of Personal Data

## With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Commissioner is the Data Controller and that the Supplier is the Data Processor.

## The Supplier shall:

### Process the Personal Data only in accordance with instructions from the Commissioner (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Commissioner to the Supplier during the Term);

### Process the Personal Data only to the extent, and in such manner, as is necessary for the delivery of the Project or as is required by Law or any Regulatory Body;

### implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

### take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;

### obtain Approval in order to transfer the Personal Data to any sub-contractors or Affiliates for the delivery of the Project;

### ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 24 (Protection of Personal Data);

### ensure that no Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commissioner;

### notify the Commissioner (within five (5) Working Days) if it receives:

#### a request from a Data Subject to have access to that person's Personal Data; or

#### a complaint or request relating to the Commissioner's obligations under the Data Protection Legislation;

### provide the Commissioner with full cooperation and assistance in relation to any complaint or request made, including by:

#### providing the Commissioner with full details of the complaint or request;

#### complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Commissioner's instructions;

#### providing the Commissioner with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commissioner); and

#### providing the Commissioner with any information requested by the Commissioner;

### permit the Commissioner or a Commissioner representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Commissioner to enable the Commissioner to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement;

### on request, provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Commissioner); and

### not Process or otherwise transfer any Personal Data outside the European Economic Area without the prior written consent of the Commissioner and subject to the Supplier entering into a direct data processing agreement with the Commissioner on such terms as may be required by the Commissioner, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

## The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Commissioner to breach any of its applicable obligations under the Data Protection Legislation.

# Freedom of Information

## The Supplier acknowledges that the Commissioner is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Commissioner to enable the Commissioner to comply with its Information disclosure obligations.

## The Supplier shall and shall procure that any sub-contractors shall:

### transfer to the Commissioner all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

### provide the Commissioner with a copy of all Information in its possession or power in the form that the Commissioner requires within five (5) Working Days (or such other period as the Commissioner may specify) of the Commissioner's request; and

### provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

## The Commissioner shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

## In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Commissioner.

## The Supplier acknowledges that (notwithstanding the provisions of clause 26 (Confidential Information)) the Commissioner may be obliged under the FOIA or the Environmental Information Regulations or any statutory codes, including the Code to disclose information concerning the Supplier or the Project in certain circumstances:

### without consulting the Supplier; or

### following consultation with the Supplier and having taken their views into account,

* 1. provided always that where clause 25.5.1 applies the Commissioner shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

## The Supplier shall ensure that all Information is retained for disclosure and shall permit the Commissioner to inspect such records as requested from time to time.

# Confidential Information

## The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Commissioner shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Commissioner to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public.

## Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, the Supplier hereby agrees to:

### treat the Confidential Information as confidential and safeguard it accordingly; and

### not disclose the Confidential Information to any other person without the owner's prior written consent.

## Clause 26.2 shall not apply to the extent that:

### such disclosure is a requirement of Law making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 25 (Freedom of Information);

### such information was in the possession of the Supplier making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

### such information was obtained from a third party without obligation of confidentiality;

### such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

### it is independently developed without access to the Confidential Information.

## The Supplier may only disclose the Confidential Information to such of the Staff who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Staff are aware of, acknowledge the importance of, and shall comply with these obligations as to confidentiality.

## The Supplier shall not, and shall procure that the Staff do not, use any of the Confidential Information received otherwise than for the purposes of this Agreement.

## At the written request of the Commissioner, the Supplier shall procure that those members of its Staff identified in the Commissioner's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement*.*

## The Commissioner recognises that the Supplier may itself wish to publish material describing or referring to its work on the Project in journals, theses or dissertations and to present such material at symposia, or professional meetings. The Commissioner will not unreasonably withhold his consent provided the Commissioner has been furnished with copies of any proposed publication or presentation at least one month in advance of the submission of such proposed publication or presentation.

# Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

## The Supplier shall comply with, and shall ensure that the Staff comply with, the provisions of:

### the Official Secrets Acts 1911 to 1989; and

### Section 182 of the Finance Act 1989.

## In the event that the Supplier or the Staff fail to comply with this clause, the Commissioner may terminate this Agreement by giving notice in writing to the Supplier.

section G - SUPPLIER and commissioner protection

# Suppliers Obligations

## The Supplier shall:

### at all times allocate sufficient resources to provide the Project in accordance with the terms of this Agreement;

### subject to clause 31 (Change in Law) obtain, and maintain throughout the Term, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Project; and

### provide the Commissioner with such assistance as the Commissioner may reasonably require during the Term in respect of the delivery of the Project.

# Warranties and Representations

## The Supplier warrants, represents and undertakes that:

### it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement;

### this Agreement is executed by a duly authorised representative of the Supplier;

### in entering into this Agreement it has not committed any Fraud;

### no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement;

### it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

### no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

### it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement;

### all Staff used to provide the Project will be vetted in accordance with Good Industry Practice;

### it has and will continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies necessary to perform the Supplier's obligations under this Agreement; and

### it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Agreement.

# Mistakes in Information

1. The Supplier shall be responsible for the accuracy of all drawings, documentation, findings, information and results supplied to the Commissioner by the Supplier in connection with the delivery of the Project and shall pay the Commissioner any extra costs occasioned by any discrepancies, errors or omissions therein.

section h - risk protection

# Change IN LAW

## The Supplier shall bear the cost of ensuring that the Project shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Supplier at the Commencement Date.

## Where such reasonably unforeseeable amendments are necessary, the Commissioner and the Supplier shall use all reasonable endeavours to agree upon reasonable adjustments to the Contract Price as may be necessary to compensate the Supplier for such additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such amendments.

# Force Majeure

## Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of two (2) Months, the Party not suffering from Force Majeure may terminate this Agreement with immediate effect by notice in writing.

## Any failure or delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

## A Party cannot claim relief in respect of Force Majeure pursuant to this clause 33 (Force Majeure) where the Force Majeure in question is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.

## If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 33.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

# Environmental Requirements

## The Supplier shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Project. Without prejudice to the generality of the foregoing, the Supplier shall:

### when working on the Premises, perform its obligations under this Agreement in accordance with the Commissioner's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and

### promptly provide all such information regarding the environmental impact of the Project as may be reasonably requested by the Commissioner.

## The Supplier shall meet all reasonable requests by the Commissioner for information evidencing compliance with the provisions of this clause 34 (Environmental Requirements) by the Supplier.

section i - indemnities, liabilities and insurance

# IPR INDEMNITY

## The Supplier shall not infringe any Intellectual Property Rights of any third party in delivering the Project and shall at all times, during and after the Term, indemnify and keep indemnified and hold the Commissioner harmless from and against all Losses (including legal fees) incurred by, awarded against or agreed to be paid by the Commissioner as a result of or in connection with an IPR Claim.

## The Commissioner shall promptly notify the Supplier in writing of any IPR Claim.

## The Supplier shall, at its own expense, conduct all negotiations and proceedings regarding any IPR Claim, provided always that the Supplier shall:

### consult the Commissioner on all substantive issues which arise during the conduct of such negotiations and proceedings;

### take due and proper account of the interests of the Commissioner;

### not, without first consulting the Commissioner, make any admissions which may be prejudicial to the defence or settlement of an IPR Claim; and

### not settle or compromise any IPR Claim without the Commissioner’s prior written consent (not to be unreasonably withheld or delayed).

## The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Commissioner into disrepute.

## The Commissioner shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any IPR Claim and the Supplier shall indemnify the Commissioner for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

## If an IPR Claim is made, or in the reasonable opinion of the Supplier, is likely to be made, the Supplier shall notify the Commissioner and, at its own expense and subject to the consent of the Commissioner (not to be unreasonably withheld or delayed), use its best endeavours to:

### replace or modify the relevant item with non-infringing substitutes provided that:

#### the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

#### the replaced or modified item does not have an adverse effect on any other services in relation to the delivery of the Project;

#### there is no additional cost to the Commissioner; and

#### the terms of this Agreement shall apply to the replaced or modified Project; or

### procure a licence to use and supply the services in relation to the delivery of the Project which are the subject of the alleged infringement on terms which are acceptable to the Commissioner,

* 1. and in the event that the Supplier is unable to comply with clauses 35.6.1 or 35.6.2 within a reasonable period of time, or where the Supplier elects to modify or replace an item pursuant to clause 35.6.1 or to procure a licence in accordance with clause 35.6.2 but this has not avoided or resolved the IPR Claim, then the Commissioner may terminate this Agreement with immediate effect by notice in writing.

# LIMITATIONS of LIABILITY

## Neither Party excludes or limits liability to the other Party for:

### death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable); or

### Fraud or fraudulent misrepresentation by it or its employees; or

### any breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.

## The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Commissioner or by breach by the Commissioner of its obligations under this Agreement.

## Subject always to clause 36.1, the Supplier's liability for Defaults shall be subject to the following financial limits:

### in respect of the indemnities in clauses 9.2 (Tax) and 35.1 (IPR Indemnity) shall be unlimited;

### in respect of Defaults resulting in direct loss of or damage to the Premises, property or assets of the Commissioner under or in connection with this Agreement shall in no event exceed £500,000 pounds;

### in respect of all other Defaults (other than those governed by clauses 36.3.1 to 36.3.2) shall in no event exceed one hundred per cent (100%) of the Contract Price paid or payable by the Commissioner to the Supplier in the year in which the liability arises.

## Subject always to clause 36.1, the Commissioner's total aggregate liability under this Agreement, in addition to its obligation to pay the Contract Price, shall in no event exceed the contract price paid and properly invoiced in the 4 Month period immediately preceding the event giving rise to the liability.

## Subject always to clause 36.1, in no event shall either Party be liable to the other for any:

### loss of profits, business, revenue or goodwill; and/or

### indirect, special or consequential loss or damage.

## Subject to clause 36.3 the Commissioner may recover as a direct loss:

### any additional operational, marketing, public relations and/or administrative costs and expenses arising from the Supplier's Default;

### any wasted expenditure or charges rendered unnecessary and/or incurred by the Commissioner arising from the Supplier's Default;

### the additional cost of procuring Replacement Services for the remainder of the Term;

### any anticipated savings;

### loss or corruption of any data owned by the Commissioner and the costs incurred by the Commissioner in replicating that data; and/or

### the costs of external consultancy, internal management and personnel costs the Commissioner reasonably and necessarily incurred as a result of any default by the Supplier under the Agreement.

# Insurance Requirements

## The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of its performance of its obligations under this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

## The Supplier shall hold employer's liability insurance in respect of Staff in accordance with all applicable Laws in force from time to time.

## The Supplier shall give the Commissioner, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this clause 37 (Insurance Requirements) the Commissioner may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Supplier.

## The Supplier shall effect and maintain appropriate professional indemnity insurance cover during the Term and shall ensure that all agents, professional consultants and sub-contractors involved in the delivery of the Project do the same. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

## The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement. It shall be the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable it to satisfy any liability referred to in clause 36.3.1 (Indemnities).

section J - term, termination and exit management

# Term

1. This Agreement shall take effect on the Commencement Date and shall expire automatically on the completion of the Project to the Commissioner's satisfaction or in any event 24 calendar months after the Commencement Date unless terminated at an earlier date by operation of Law or in accordance with the provisions of this Agreement (**"Term"**).

# Termination rights

## **Termination on Insolvency**

### The Commissioner may terminate this Agreement by giving written notice of termination to the Supplier if one or more of the circumstances set out in clause 39.1.2 exist.

### The circumstances giving rise to the Commissioner's right to terminate are:

#### where the Supplier is a company, an Insolvency Event occurs in respect of the Supplier;

#### where the Supplier is an individual, a Bankruptcy Event occurs in respect of the Supplier;

#### where the Supplier is a partnership or a limited liability partnership and in respect of the Supplier:

##### a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

##### it is for any reason dissolved; or

##### any applicable Insolvency Event or Bankruptcy Event occurs, such determination to made by the Commissioner in its sole discretion.

## **Termination on Change of Control**

### The Supplier shall notify the Commissioner immediately if the Supplier undergoes a change of control within the meaning of section 450 of the Income and Corporation Taxes Act 2010 (**"change of control"**).

### The Commissioner may terminate this Agreement by notice in writing with immediate effect if there is a change of control to which the Commissioner reasonably objects, except where the Commissioner:

#### has given its prior written consent to the particular change of control, which subsequently takes place as proposed; or

#### has not served its notice within six (6) Months of the later of the date the change of control took place or the date on which the Commissioner was given notice of the change of control.

## **Termination on Default**

### The Commissioner may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:

#### commits a Default and if:

##### the Supplier has not remedied the Default to the reasonable satisfaction of the Commissioner within 25 Working Days, or such other period as may be specified by the Commissioner, after issue of a written notice specifying the Default and requesting it to be remedied; or

##### the Default is not, in the opinion of the Commissioner, capable of remedy; or

##### the Default is a material breach of this Agreement.

### Where the Commissioner terminates this Agreement pursuant to this clause 39.3 (Termination on Default) and makes alternative arrangements for the delivery of the Project, the Commissioner may recover from the Supplier the cost reasonably incurred of making such alternative arrangements and any additional expenditure incurred by the Commissioner throughout the remainder of the Term. The Commissioner shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Commissioner to the Supplier in respect of the Project supplied by the Supplier prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Commissioner, until the Commissioner has established the final cost of making the alternative arrangements envisaged under this clause.

## **Termination by the Supplier**

### The Supplier may terminate this Agreement in writing with immediate effect only if the Commissioner is in material breach of its obligation to pay any undisputed element of the Contract Price by giving the Commissioner 60 days written notice specifying the breach and requiring its remedy, save that such right of termination shall not apply where the failure to pay is due to the Commissioner exercising its rights under clause 10 (Recovery of Sums Due).

### The Supplier shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

## **Termination for Convenience**

### The Commissioner shall have the right to terminate this Agreement at any time by giving one (1) Month’s written notice to the Supplier.

## **Right to terminate in part**

### In any of the circumstances in clause 39 in which the Commissioner may terminate this Agreement, the Commissioner may instead terminate any element or part of the Project. In the event of partial termination, the Commissioner and the Supplier shall implement a corresponding reduction in the Contract Price in accordance with Schedule 3 (Pricing and Invoicing). The Supplier shall perform its obligations under clause 40 (Consequences of Expiry or Termination) in relation to the terminated portion of the Agreement only.

# Consequences of Expiry or Termination

## Save as set out in clause 39 (Termination Rights), the Commissioner shall not be required to pay any sums to the Supplier in respect of the termination or expiry of this Agreement by way of compensation or otherwise.

## Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## Termination or expiry of this Agreement shall not affect the continuing rights, remedies or obligations of the Commissioner or the Supplier pursuant to clauses 9 (Tax), 10 (Recovery of Sums Due), 13 (Audit), 22 (Non-solicitation), 23 (Intellectual Property Rights), 24 (Protection of Personal Data), 25 (Freedom of Information), 26 (Confidential Information), 27 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 35 (IPR Indemnity), 36(Limitations of Liability), 37 (Insurance Requirements), 40 (Consequences of Expiry or Termination), 41 (Recovery upon Expiry or Termination), 42 (Transfer of Terms), 48 (Prevention of Corruption), 49 (Third Party Rights), 51 (Severance), 52 (Entire Agreement) and 55 (Governing Law and Jurisdiction).

# Recovery upon Expiry or Termination

## Following the service of a notice to terminate for any reason the Supplier shall continue to be under an obligation to provide the Project and to ensure that there is no degradation in the standards of the Project until the date of the termination.

## In the event of termination or expiry of this Agreement the Supplier shall:

### repay to the Commissioner any aspect of the Contract Price it has been paid in advance in respect of any part of the Project not provided by the Supplier as at the date of expiry or termination;

### subject to clause 41.2.4 below, cease to use the Commissioner Data and, at the direction of the Commissioner provide the Commissioner and/or the Replacement Supplier with a complete and uncorrupted version of the Commissioner Data in electronic form in the formats and on media agreed with the Commissioner and/or the Replacement Supplier;

### subject to clause 41.2.4 below, upon the earlier of:

#### the receipt of the Commissioner's written instructions; or

#### 12 Months after the date of expiry or termination,

#### destroy all copies of the Commissioner Data, excepting a copy of any such Commissioner Data which is also a record as set out in clause 14 (Records) and promptly provide written confirmation to the Commissioner that the data has been destroyed;

### immediately return to the Commissioner (or such other party as nominated by the Commissioner) all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of delivering the Project;

### immediately deliver to the Commissioner (or such other party as nominated by the Commissioner) all Property (including materials, documents, information and access keys) provided to the Supplier under clause 7 (Access to Premises). Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

### assist and co-operate with the Commissioner (or such other party as nominated by the Commissioner) to ensure an orderly transition of the provision of the services in relation to the delivery of the Project to the Replacement Supplier and/or the completion of any work in progress; and

### promptly provide all information concerning the delivery of the Project which may reasonably be requested by the Commissioner for the purposes of adequately understanding the manner in which the services in relation to the delivery of the Project have been provided or for the purpose of allowing the Commissioner or the Replacement Supplier to conduct due diligence.

## If the Supplier fails to comply with clauses 41.2.2 to 41.2.5, the Commissioner may recover possession of the relevant materials and the Supplier grants a licence to the Commissioner or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.

## Except where the end of the Term arises as result of the Commissioner's exercise of its option pursuant to clause 39.5 (Termination for Convenience), the Supplier shall meet all of its obligations under this clause 41 (Recovery Upon Expiry or Termination) at no charge to the Commissioner.

SECTION K - MISCELLANEOUS AND GOVERNING LAW

# transfer of terms

## Notwithstanding any other provision of this Agreement, to the extent that at any time during the Term the Commissioner is mandated by the Ministry of Justice (or any other Governmental body) to transfer this Agreement onto any other form of standard Government agreement (**"New Agreement"**) the Supplier hereby agrees to:

### terminate this Agreement in the timescales notified by the Commissioner; and

### continue delivering the Project set out in this Agreement (as specified in the Project Requirements) pursuant to the terms of the New Agreement for the unexpired Term of this Agreement and in consideration for payment by the Commissioner of the Contract Price set out in Schedule 3 of this Agreement (pro-rated to the extent necessary for the purposes of the New Agreement).

# aSSIGNMENT AND nOVATION

## The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without Approval.

## The Commissioner may:

### assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any other Contracting Authority; or

### novate this Agreement and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Commissioner. If this transfer increases the burden of the Supplier's obligations under this Agreement the Supplier may be entitled to a reasonable increase in the Contract Price by way of compensation which can be agreed pursuant to clause 15.

## A change in the legal status of the Commissioner shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Commissioner.

# Waiver AND CUMULATIVE REMEDIES

## The rights and remedies provided by this Agreement may be waived only in writing by an authorised representative of the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

## Unless a right or remedy of the Commissioner is expressed to be an exclusive right or remedy, the exercise of it by the Commissioner is without prejudice to the Commissioner's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

## The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

# relationship of the parties

1. At all times during the Term the Supplier shall be an independent contractor and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement.

# Commissioner's Obligations

## Save as otherwise expressly provided, the obligations of the Commissioner under this Agreement are obligations of the Commissioner in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Commissioner in any other capacity, nor shall the exercise by the Commissioner of its duties and powers in any other capacity lead to any liability under this Agreement howsoever arising on the part of the Commissioner to the Supplier.

# Conflicts of Interest

## The Supplier shall take appropriate steps to ensure that neither it nor any member of the Staff is placed in a position where, in the reasonable opinion of the Commissioner, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The Supplier will disclose to the Commissioner necessary particulars of any actual or potential conflict of interest which may arise as soon as reasonably practicable after becoming aware that such actual or potential conflict exists.

## The Commissioner may, in its reasonable opinion, terminate this Agreement immediately by notice in writing and/or to take such other steps as it deems necessary where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The actions of the Commissioner pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

# Prevention of Corruption

## The Supplier, its Staff and the Supplier's agents and contractors, including each sub‑contractor shall not, in connection with this Agreement:

### directly or indirectly offer, promise or give any person working for or engaged by the Commissioner a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### 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.

## The Supplier shall not enter into this Agreement if it has knowledge that, in connection with it, any financial or other advantage has been, or will be, given to any person working for or engaged by the Commissioner, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Commissioner before execution of this Agreement.

## The Supplier shall have an anti-bribery policy and procedure (details of which shall be disclosed to the Commissioner) to prevent any of its Staff, agents or sub-contractors from bribing another person or being bribed.

## If any of the Supplier, its Staff, agents or sub-contractors, (in all cases whether or not acting with the Supplier's knowledge):

### breaches clause 48.1;

### breaches any applicable legal and regulatory anti-bribery obligations, including the Bribery Act 2010; or

### commits a Prohibited Act;

#### the Commissioner may act in accordance with the provisions of clause 48.9 .

## If any breach of clause 48.4 is suspected or known the Supplier shall notify the Commissioner of such suspected or known breach immediately.

## In the event that the Supplier notifies the Commissioner that it suspects or knows that there may be a breach of clause 48.4 the Supplier shall respond promptly to the Commissioner's enquiries, co-operate with any investigation and allow the Commissioner to audit books, records, and any other relevant documentation.

## Any termination under clause 48.4 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Commissioner.

## Notwithstanding clause 16 (Dispute Resolution), any dispute relating to:

### the interpretation of clauses 48.1 to 48.4 inclusive; or

### the amount or value of any gift, consideration or commission,

#### shall be determined by the Commissioner and the decision shall be final and conclusive.

## **Termination for Prohibited Acts**

### If a Prohibited Act is committed by the Supplier or by an employee not acting independently of the Supplier, then the Commissioner may terminate this Agreement by giving notice to the Supplier.

### If a Prohibited Act is committed by;

#### an employee of the Supplier acting independently of the Supplier;

#### a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor;

#### an employee of a sub-contractor acting independently of that sub-contractor; or

#### any other persons connected to the Supplier not specified in clauses 48.9.2.1 to 48.9.2.3,

#### then the Commissioner may give notice to the Supplier of termination and this Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice the Supplier procures the termination of such person's employment and of the appointment of their employer (where not employed by the Supplier or its sub-contractors) and (if necessary) procures the performance of such part of the relevant obligations under this Agreement by another person.

### Any notice of termination under this clause 48.9 (Termination for Prohibited Acts) shall specify:

#### the nature of the Prohibited Act;

#### the identity of the party whom the Commissioner believes has committed the Prohibited Act;

#### the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

### In this clause 48.9 (Termination for Prohibited Acts), the expression "not acting independently of" (when used in relation to the Supplier or its sub-contractors) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Supplier or the sub-contractor (as the case may be).

# third party rights

## A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## Any rights created under clause 49.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

# Publicity, Media and Official Enquiries

## The Contractor shall not make any press announcement in relation to this Agreement or the provision of the Project, except with prior Approval.

## The Contractor shall take reasonable steps to ensure that its Staff, suppliers, professional advisors and consultants comply with clause 50.1.

# SEVERANCE

1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

# Entire Agreement

## This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

## Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

## Nothing in this clause 52 (Entire Agreement) shall operate to exclude any liability for Fraud or negligent misstatement.

# Notices

## Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to the address and for the attention of the relevant Party as set out in clause 53.4 below or such other address as that Party may have stipulated in accordance with this clause.

## A notice shall be deemed to have been received:

### if delivered personally, at the time of delivery;

### in the case of pre-paid first class post, recorded delivery or special delivery, three (3) Working Days after the day on which the letter was posted;

### in the case of facsimile transmissions, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and

### in the case of electronic mail, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or special delivery to the intended recipient.

## In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at the address as set out in clause 53.4 below (or such other address as that Party may have stipulated in accordance with this clause) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax, to the fax number of the relevant Party as set out in clause 53.4 below (or such other fax number as that Party may have stipulated in accordance with this clause).

## As at the Commencement Date, the address of each Party shall be:

### For the Commissioner:

The Information Commissioner

Address:

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

For the attention of:

Tel:

Fax:

Email:

### For the Supplier:

[◆ ]

Address:

[◆ ]

For the attention of:

Tel:

Fax:
Email:

# Counterparts

1. This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# Governing Law and Jurisdiction

1. Subject to the provisions of clause 16 (Dispute Resolution), the Commissioner and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**IN WITNESS** of which this Agreement has been duly executed by the Parties.

**SIGNED** for and on behalf of **SIGNED [**for and on behalf of] **OR** [by]  **The Information Commissioner [*Supplier*]**

Signature….......................................................... Signature…..........................................................

Name: …............................................................. Name…................................................................

Position: ….......................................................... Position….............................................................

Date….................................................................. Date…..................................................................

[***Drafting Note: Please select the appropriate option above depending on whether the Supplier is a corporate body (first option) or an individual (second option).***]

1. DEFINITIONS

|  |  |
| --- | --- |
| **"Acceptance"**  | means the approval and acceptance of the Project as prescribed in clause 4.2.1 and clause 4.4.1 (Delivery and Acceptance of Project) and **"Accepted"** and **"Accept"** shall be construed accordingly;  |
| **"Affiliate"** | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;  |
| **"Agreement"** | means this written agreement between the Commissioner and the Supplier consisting of these clauses and any attached Schedules; |
| **"Approval"** | means the written consent of the Commissioner; |
| **"Bankruptcy Event"** | means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity: |
|  | (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or |
|  | (b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or |
|  | (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or |
|  | (d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or |
|  | (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or |
|  | (f) he dies or is adjudged incapable of managing his affairs within the meaning of the Mental Capacity Act 2005; or |
|  | (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; |
| **"Bribery Act"** | the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation; |
| **"change of control"** | has the meaning given to it at clause 39.2.1; |
| **"Code"** | means the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000; |
| **"Commencement Date"** | means the [date to be agreed prior to signature]; |
| **"Commissioner Data"** | means: |
|  | * 1. (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, and which are:
 |
|  | * 1. (i) supplied to the Supplier by or on behalf of the Commissioner; or
 |
|  | * 1. (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
 |
|  | * 1. (b) any Personal Data for which the Commissioner is the Data Controller;
 |
| **"Commissioner IPRs"**  | means IPRs owned by the Commissioner which have been created before this agreement or which are licensed to the Commissioner but which may be used in the performance of the Project; |
| **“Commissioner Representative”** | is the person named in Schedule 2 and any changes to this person will be notified to the Supplier from time to time; |
| **"Confidential Information"** | means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Commissioner, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| **"Contract Price"** | means the price (exclusive of any applicable VAT) payable to the Supplier by the Commissioner under this Agreement, as set out in Schedule 3 (Pricing and Invoicing), for the full and proper performance by the Supplier of its obligations under the Agreement; |
| **"Contracting Authority"** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006; |
| **"Control"** | means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly; |
| **"Conviction"** | other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988); |
| **"Crown Body"** | means any department, office or agency of the Crown; |
| **"Data Controller"** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **"Data Processor"** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **"Data Protection Legislation"** | means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| **"Data Subject"** | shall have the same meaning as set out in the Data Protection Act 1998;  |
| **"Default"** | means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other; |
| **"Developed IPRs"**  | means any IPRs created by the Supplier, its subcontractors or other third parties either (a) for the Commissioner pursuant to the terms of this agreement (even if it is created before the agreement is signed); or (b) during the course of the Project; |
| **"Due Date"**  | means the date by which the Project must be delivered and completed as defined in clause 4 (Delivery and Acceptance of Project); |
| **"Environmental Information Regulations"** | means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations; |
| **"Employee Liabilities"** | all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses; |
| **"Equipment"** | means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement; |
| **"FOIA"** | means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
| **"Force Majeure"** | means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: |
|  | (a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or |
|  | (b) the failure by any sub-contractor to perform its obligations under any sub-contract; |
| **"Fraud"** | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud a Crown Body; |
| **"Good Industry Practice"** | means standards, practices, methods and procedures conforming to the Law and the exercise of that 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 in a similar type of undertaking under the same or similar circumstances; |
| **"Information"** | has the meaning given under section 84 of the FOIA; |
| **"Information System"** | means a system for generating, sending, receiving, storing or otherwise processing electronic communications; |
| **"Insolvency Event"** | means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity: |
|  | * + 1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 |
|  | * + 1. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 |
|  | * + 1. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 |
|  | * + 1. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 |
|  | * + 1. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 |
|  | * + 1. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 |
|  | * + 1. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;
 |
| **"Intellectual Property Rights"** or **"IPR"** | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off; |
| **"IP Materials"** | means all Intellectual Property Rights created as a result of the performance of this Agreement; |
| **"IPR Claim"** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to in connection with the Project or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Commissioner in the fulfilment of its obligations under this Agreement; |
| **"Key Personnel"** | means those persons named in the Project Requirements as being key personnel; |
| **"Law"** | means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body; |
| **"Losses"** | (without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses; |
| **"Month"** | means a calendar month; |
| **"Party"** | means a party to this Agreement and "**Parties**" shall be interpreted accordingly; |
| **"Personal Data"** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Phase 1 Project”** | means an independent study and report conducted for the Commissioner as set out in Schedule 2*;* |
| **“Phase 2 Project”** | means the design, development and production of materials for the Commissioner as set out in Schedule 2*;* |
| **“Phase 1 report”** | means the report provided by the Supplier to the Commissioner on completion of the Phase 1 Project as required in Schedule 2;  |
| **"Premises"** | means premises owned, controlled or occupied by the Commissioner which are made available for use by the Supplier or its sub-contractors for delivery of the Project on the terms set out in this Agreement or any separate agreement or licence, as set out in the Projects Requirements; |
| **"Process"** | has the meaning given to it under the Data Protection Act 1998 but, for the purposes of this Agreement, it shall include both manual and automatic processing and "Processing" shall be construed accordingly; |
| **"Prohibited Act"** | means:* + 1. directly or indirectly offering, promising or giving any person working for or engaged by the Commissioner a financial or other advantage to:
 |
|  | (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) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; |
|  | (c) entering into this Agreement or any other contract with the Commissioner in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Commissioner; |
|  | (d) committing any offence: |
|  | (i) under the Bribery Act; |
|  | (ii) under any other Laws creating offences in respect of Fraud; or |
|  | (iii) at common law in respect of Fraud in relation to this Agreement or any other contract with the Commissioner; or |
|  | (e) defrauding or attempting to defraud or conspiring to defraud the Commissioner; |
| **"Property"** | means any equipment, tools or other property, other than real property, issued or made available to the Supplier by the Commissioner in connection with this Agreement; |
| **"Quality Standards"** | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, as may be further detailed in the Project Requirements; |
| **"Receipt"** | means the physical or electronic arrival of an invoice at the address of the Commissioner detailed in Schedule 3 (Pricing and Invoicing) or any other address notified to the Supplier for the submission of invoices; |
| **"Regulatory Bodies"** | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Commissioner and "**Regulatory Body**" shall be construed accordingly; |
| **"Relevant Convictions"** | means a Conviction that is relevant to the nature of the Project; |
| **"Replacement Services"** | any services which are substantially similar to any of the services in relation to the delivery of the Project and which the Commissioner receives in substitution for any of the services in relation to the delivery of the Project following the expiry or termination or partial termination of this Agreement, whether those services are provided by the Commissioner internally and/or by any third party; |
| **"Replacement Supplier"** | any third party service provider of Replacement Services appointed by the Commissioner from time to time; |
| **"Request for Information"** | means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| **"Schedule"** | means a schedule attached to, and forming part of, this Agreement; |
| **"Supplier IPRs"**  | means IPRs belonging to the Supplier or its subcontractors which have been created independently, not in connection with this agreement and before the Supplier entered into any agreement with the Commissioner. This may include third party IPRs which the Supplier is licensed to use; |
| **"Supplier Party"** | the Supplier's agents and contractors, including each sub-contractor; |
| **"Term"** | has the meaning set out in clause 38; |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| **"Working Day"** | means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London. |

1. Projects Requirements
	1. - Phase 1 Project Requirements

## **Background to the Project**

The aim of the project is to better equip the future workforce with knowledge of the theory and the practice of information rights in order to improve the knowledge available to various types of organisations, particularly small and medium sized enterprises and encourage take up of information rights roles such as Data Protection Officer.

In emerging and innovative areas such as data science and big data it will be important that students learning technical skills also learn concepts such as privacy by design and methodologies such as privacy impact assessments. The project will enable young adults to develop a better understanding of how to protect and control their own personal data.

# Deliverables:

Feasibility Study:

Given that there is no universal curriculum for higher education, the Phase 1 Project research will establish the current situation, identify opportunities to engage with higher educational establishments and assess the feasibility of embedding information rights into relevant degree programmes and other courses.

The opportunities for embedding data protection are likely to be greater than freedom of information but there will be relevant programmes where both could be taught. The possible areas and types of courses will be assessed during the Phase 1 Project.

Phase 1 Report:

At the end of the feasibility research study a report will be prepared which examines current information rights activity within universities and colleges, the shortfalls, what opportunities to improve the situation exist, recommendations for implementation and expected outcomes if such opportunities are taken.

The report will explain the practical steps needed to embed information rights into the higher/further education systems and what action the Commissioner can realistically take to improve the current landscape. The report will identify the different types of degree programmes, undergraduate and postgraduate, where information rights topics are being taught, or could be taught.

The report will also make recommendations about the different methods that would need to be developed for different categories of degree programme and will recommend topics to be introduced and innovative methods of delivery to embed information rights into the relevant courses. It will describe the recommended support materials for tutors and methods of raising awareness of the new teaching resource. It will also set out the associated costs of each option and any required engagement with any relevant stakeholders. The report will recommend the highest priority areas and the most deliverable to enable ICO to select the most favourable options.

If the report concludes that the overall aim is not achievable, or that the chances of a successful outcome are limited, it should identify other opportunities and actions that may be available to ICO to raise awareness in the target group.

Relevant changes introduced by the General Data Protection Regulation will need to be reflected in the recommended materials. ICO therefore expects Tenderers to demonstrate their awareness of its impact.

# Timings:

The Phase 1 Report is expected to be completed and delivered to the Commissioner within 4 months of the Commencement Date. The final draft will be published by the Commissioner on his website. The wording and style of the draft will be agreed with the Commissioner prior to publication but the Supplier agrees that the Commissioner will have full editorial control over the final version.

The frequency and timing of review meetings will be agreed between the Parties.

* 1. Phase 2 Project Requirements

## **Deliverables:**

If the initial feasibility study and Phase 1 Report concludes that the aim of the Project is achievable and has a realistic prospect of success, and provided the Information Commissioner agrees, the project will move to Phase 2.

This will require the development, design and production of the learning materials and solutions recommended by the Supplier in Phase 1 and selected from the Phase 1 Report by the Commissioner.

# Timings:

The Phase 2 Project is expected to be completed within 10 months of the Commencement Date.

1. Pricing and Invoicing
	1. Contract Price

***[Drafting Note: This should be populated by the Supplier and should include specific details of:***

* ***the Contract Price for the Phase 1 Project (which is exclusive of VAT and other taxes);***

Unless otherwise stated within this Schedule 3, the Commissioner shall not be liable to reimburse the Supplier for any expenses incurred in addition to the Contract Price, save for any professional fees or third party disbursements properly and necessarily incurred by the Contractor in the performance of its obligations under this Agreement.

The total value of the Contract is not expected to exceed £50,000 (with an agreed tolerance of plus 10% depending on the options chosen by the Commissioner at the end of Phase 1).

* 1. Invoicing
1. **Supplier Invoices**
	1. The Supplier shall invoice the Commissioner in respect of the Project in accordance with the following timescales for the issue of invoices:
* 25% of the Contract Price will be invoiced 30 days after the Commencement Date,
* the remaining 75% of the Contract Price will be invoiced on production of the finalised publication ready report following the Commissioner’s quality check and any subsequent changes required.
	1. The Supplier shall ensure that each invoice contains the following information:
		1. the date of the invoice;
		2. a unique invoice number;
		3. details of the correct agreement reference;
		4. the reference number of the purchase order to which it relates;
		5. the percentage Contract Price being invoiced, gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Commissioner under the terms of the Agreement, and, separately, any VAT or other sales tax payable in respect of the same;
		6. a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
		7. the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
1. **Payment Terms**
2. Subject to the provisions of paragraph 1 of this Part 2, the Commissioner shall make payment to the Supplier within 30 days of receipt of a valid invoice.
3. **Disputed Invoices**
4. If the Commissioner reasonably disputes any of the Supplier's invoices, or any part of an invoice, it shall pay to the Supplier the undisputed part or parts of such invoice but may withhold payment in respect of the disputed part pending the Supplier's provision of any further information reasonably requested by the Commissioner. On receipt of such further information the Commissioner may:
	1. pay the invoice within 30 days of receipt of the information; or

escalate the dispute using the procedure set out in clause 16 (Dispute Resolution).