

# SHORT FORM CONTRACT FOR THE SUPPLY OF SUPERSTAR PLATFORM SOFTWARE SUBSCRIPTION LICENCES AND APPLICATION LAYER SUPPORT.

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**II. Order Form**

<b>1. Contract Reference</b>	ecm_11766	
<b>2. Buyer</b>	Department for Work and Pensions, 2 St Peters Square, Manchester M2 3AA United Kingdom. In entering into this Contract, the Buyer is acting as part of the Crown and the Supplier shall be treated as contracting with the Crown as a whole.	
<b>3. Supplier</b>	WingArc Australia Pty Ltd, PO Box 16044, Collins St West, VIC, 8007, Australia. ACN: 006 559 191, ABN: 98 006 559 191	
<b>4. The Contract</b>	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables.</p> <p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p>	
<b>5. Deliverables</b>	<b>Goods</b>	N/A
	<b>Services</b>	The supply of Deliverables, being SuperSTAR platform software subscription licences and Application Layer support.
<b>6. Specification</b>	<p>The specification of the Deliverables is as set out in Annex 2 and summarised below:</p> <ol style="list-style-type: none"> <li>1. SuperSTAR Platform: SuperSERVER (including SuperADMIN, SuperCHANNEL) - 5 instances - 2 production (1 internal, one external), and 3 test</li> <li>2. SuperCROSS - 5 concurrent users employed by Licensee</li> <li>3. SuperWEB2 incl. SDMX Web Services, Geo Selection, Job Queue Manager - Unlimited external users Open Data API - Unlimited external users</li> <li>4. Support and maintenance, as defined in the WAA Customer Support Guide, is included in annual licence fee.</li> <li>5. Application Layer Support for AWS hosted Stat-Xplore solution of SuperSTAR. These services cover ONLY the SuperSTAR software, and not any other software patching and upgrades. These services do not include any data management service.</li> </ol> <p>If required during the term of the contract, additional data management services agreed by both parties via a Statement of Work, will be chargeable as outlined in Section 12: Charges.</p>	
<b>7. Start Date</b>	13 July 2024	

<b>8. Expiry Date</b>	12 March 2027
<b>9. Extension Period</b>	The Buyer may extend the Contract for a period of up to 12 Months by giving not less than 30 Days' notice in writing to the Supplier prior to the Expiry Date. The Conditions of the Contract shall apply throughout any such extended period.
<b>10. Buyer Cause</b>	Any Material Breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier.
<b>11. Optional Intellectual Property Rights ("IPR") Clauses</b>	Not applicable
<b>12. Charges</b>	<ul style="list-style-type: none"> <li>Total charges for the contract term are £869,888, payable annually. Charges breakdown per year: <ul style="list-style-type: none"> <li>13 July 2024: £217,472</li> <li>13 March 2025: £326,208</li> <li>13 March 2026: £326,208</li> </ul> </li> <li>Additional data management services agreed by both parties via a Statement of Work, will be chargeable as per the rate card: <ul style="list-style-type: none"> <li><b>Redacted: FOI SECTION 43 COMMERCIAL INFORMATION</b> plus expenses. Any expenses required throughout the duration of the contract term, must be agreed upon in writing between the parties and aligned to DWP Travel and Expenses Policy.</li> </ul> </li> <li>Non Committed £375,000 for optional extension and any further project changes that the Buyer may require during the term of this agreement.</li> <li>The contact value will not exceed £1.25m, including any optional extensions.</li> </ul>
<b>13. Payment</b>	<p>Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier.</p> <p>The payment method for this Contract is BACS.</p> <p>All invoices must be sent, quoting a valid Purchase Order Number (PO Number) and any other relevant details, to:</p> <p>Electronic Invoices (attached to E-Mails) should be sent to: <b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p> <p>Paper invoices should be sent to:</p>

	<p>Department of Work and Pensions SSCL, PO Box 406, Phoenix House, Celtic Springs, Newport NP10 8FZ</p> <p>A copy should also be emailed to:</p> <p><b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment.</p>
<b>14. Data Protection Liability Cap</b>	N/A
<b>15. Progress Meetings and Progress Reports</b>	Not applicable
<b>16. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be:</p> <p><b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p>
<b>17. Supplier Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be</p> <p><b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p>
<b>18. Address for notices</b>	<p>Department for Work and Pensions 2 St Peters Square Manchester M2 3AA United Kingdom</p>

	<p>Attention: Commercial Lead</p> <p>Email: <b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p> <p>WingArc Australia</p> <p>PO Box 16044,</p> <p>Collins St West,</p> <p>VIC 8007</p> <p>Australia</p> <p>Attention: <b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p>
<b>19. Key Staff</b>	<p><b>Key Staff Role:</b>                      <b>Key Staff Name</b>                      <b>Contact Details:</b></p> <p><b>Redacted: FOI SECTION 40 PERSONAL INFORMATION</b></p>
<b>20. Procedures and Policies</b>	<p>For the purposes of the Contract the:</p> <p>The Buyer's security / data security requirements are:</p> <ul style="list-style-type: none"> <li>• Schedule 1 – Minimum Security Requirements.</li> </ul>
<b>21. Special Terms</b>	N/A
<b>22. Incorporated Terms</b>	<p>The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies:</p> <p>(a) This Order Form and Schedule 1 - Minimum Security Requirements</p> <p>(b) The following Annexes in equal order of precedence:</p> <ol style="list-style-type: none"> <li>Annex 1 – Service Level Agreement</li> <li>Annex 2 – WingArc Australia Software Licence Agreement</li> </ol>

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer acting on behalf of the Crown
Name: Redacted: FOI SECTION 40 PERSONAL INFORMATION	Name: Redacted: FOI SECTION 40 PERSONAL INFORMATION
Date:	Date:
Signature:	Signature:

***[Guidance: Where appropriate, this Order Form may be signed electronically by both Parties.]***

### III. Short form Terms (“Conditions”)

#### 1 DEFINITIONS USED IN THE CONTRACT

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

<b>“Affiliates”</b>	in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “ <b>Controlled</b> ” shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>“Audit”</b>	<p>the Buyer’s right to:</p> <ul style="list-style-type: none"> <li>(a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables;</li> <li>(c) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;</li> <li>(d) identify or investigate actual or suspected breach of clauses 4 to 34 (inclusive), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>(e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>(f) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>(g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> <li>(h) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer’s annual and interim reports and accounts;</li> <li>(i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;</li> </ul>

<b>“Beneficiary”</b>	A Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>“Buyer Cause”</b>	has the meaning given to it in the Order Form;
<b>“Buyer”</b>	the person named as Buyer in the Order Form. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
<b>“Charges”</b>	the charges for the Deliverables as specified in the Order Form;
<b>“Claim”</b>	any claim which it appears that the Buyer is, or may become, entitled to indemnification under this Contract;
<b>“Conditions”</b>	means these short form terms and conditions of contract;
<b>“Confidential Information”</b>	all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which <ul style="list-style-type: none"> <li>(a) is known by the receiving Party to be confidential;</li> <li>(b) is marked as or stated to be confidential; or</li> <li>(c) ought reasonably to be considered by the receiving Party to be confidential;</li> </ul>
<b>“Conflict of Interest”</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
<b>“Contract”</b>	the contract between the Buyer and the Supplier which is created by the Supplier’s counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes;
<b>“Controller”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Crown Body”</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;



<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	<ul style="list-style-type: none"> <li>(a) the UK GDPR,</li> <li>(b) the DPA 2018;</li> <li>(c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and</li> <li>(d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);</li> </ul>
<b>“Data Protection Liability Cap”</b>	has the meaning given to it in row 14 of the Order Form;
<b>“Data Protection Officer”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Data Subject Access Request”</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Data Subject”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Deliver”</b>	hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and stacking and any other specific arrangements agreed in accordance with clause 4.2. “Delivered” and “Delivery” shall be construed accordingly;
<b>“Deliverables”</b>	means the Goods, Services, and/or software to be supplied under the Contract as set out in the Order Form;
<b>“DPA 2018”</b>	the Data Protection Act 2018;
<b>“EU GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>“Existing IPR”</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>“Expiry Date”</b>	the date for expiry of the Contract as set out in the Order Form;

<b>“FOIA”</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>“Force Majeure Event”</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the <b>“Affected Party”</b>) which prevent or materially delay the Affected Party from performing its obligations under the Contract;</li> <li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(c) acts of a Crown Body, local government or regulatory bodies;</li> <li>(d) fire, flood or any disaster; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>(a) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>(b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>(c) any failure of delay caused by a lack of funds,</li> </ul> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>“Good Industry Practice”</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>“Goods”</b>	the goods to be supplied by the Supplier to the Buyer under the Contract;
<b>“Government Data”</b>	<ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: <ul style="list-style-type: none"> <li>(i) are supplied to the Supplier by or on behalf of the Buyer; or</li> </ul> </li> </ul>

	<p>(ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Controller;</p>
<b>“Indemnifier”</b>	a Party from whom an indemnity is sought under this Contract;
<b>“Independent Controller”</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>“Information Commissioner”</b>	the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>“Insolvency Event”</b>	<p>in respect of a person:</p> <p>(a) if that person is insolvent;</p> <p>(b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</p> <p>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s assets or business;</p> <p>(d) if the person makes any composition with its creditors; or</p> <p>(e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;</p>
<b>“IP Completion Day”</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>“Joint Controller Agreement”</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Part B Joint Controller Agreement ( <i>Optional</i> ) of Annex 1 – Processing Personal Data;
<b>“Joint Controllers”</b>	Where two or more Controllers jointly determine the purposes and means of processing;
<b>“Key Staff”</b>	any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier;
<b>“Law”</b>	any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of

	practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Material Breach”</b>	a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied)
<b>“National Insurance”</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>“New IPR Items”</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>“New IPR”</b>	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>“Open Licence”</b>	means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> as updated from time to time and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> as updated from time to time;
<b>“Order Form”</b>	the order form signed by the Buyer and the Supplier printed above these Conditions;
<b>“Party”</b>	the Supplier or the Buyer (as appropriate) and “Parties” shall mean both of them;
<b>“Personal Data Breach”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
<b>“Personal Data”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Prescribed Person”</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> as updated from time to time;

<b>“Processor Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>“Processor”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Protective Measures”</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>(a) the nature of the data to be protected;</li> <li>(b) harm that might result from Data Loss Event;</li> <li>(c) state of technological development;</li> <li>(d) the cost of implementing any measures;</li> </ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<b>“Purchase Order Number” or “PO Number”</b>	the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract;
<b>“Rectification Plan”</b>	<p>the Supplier’s plan (or revised plan) to rectify its Material Breach which shall include:</p> <ul style="list-style-type: none"> <li>(a) full details of the Material Breach that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Material Breach; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</li> </ul>
<b>“Regulations”</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>“Request For Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term <b>“request”</b> shall apply);
<b>“Services”</b>	the services to be supplied by the Supplier to the Buyer under the Contract;
<b>“Specification”</b>	the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;

<b>“Staff Vetting Procedures”</b>	vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer’s procedures or policies for the vetting of personnel as specified in the Order Form or provided to the Supplier in writing following agreement to the same by the Supplier from time to time;
<b>“Start Date”</b>	the start date of the Contract set out in the Order Form;
<b>“Sub-Contract”</b>	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<b>“Subcontractor”</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>“Subprocessor”</b>	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>“Supplier Staff”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract;
<b>“Supplier”</b>	the person named as Supplier in the Order Form;
<b>“Term”</b>	the period from the Start Date to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract;
<b>“Third Party IPR”</b>	intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>“Transparency Information”</b>	<p>In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract, including any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be published by the Buyer to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder)</p> <p>(<a href="https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder">https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder</a>) as updated from time to time and Public Procurement Policy Note 01/17 (update to transparency principles) where applicable</p> <p>(<a href="https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles">https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles</a>) as updated from time to time except for:</p>

	<p>(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and</p> <p>(b) Confidential Information;</p>
<b>“UK GDPR”</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);
<b>“VAT”</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Worker”</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">Tax Arrangements of Public Appointees</a> ) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) as updated from time to time applies in respect of the Deliverables; and
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2 UNDERSTANDING THE CONTRACT

2.1 In the Contract, unless the context otherwise requires:

- 2.1.1 references to numbered clauses are references to the relevant clause in these Conditions;
- 2.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.1.3 references to “writing” include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act) and to any legislation or byelaw made under that Law;
- 2.1.5 the word “including”, “for example” and similar words shall be understood as if they were immediately followed by the words “without limitation”;

- 2.1.6 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.

### **3 HOW THE CONTRACT WORKS**

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender (if any) and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### **4 WHAT NEEDS TO BE DELIVERED**

#### **4.1 All Deliverables**

- 4.1.1 The Supplier must provide Deliverables:
- 4.1.1.1 in accordance with the Specification and the Contract;
  - 4.1.1.2 using reasonable skill and care;
  - 4.1.1.3 using Good Industry Practice;
  - 4.1.1.4 using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - 4.1.1.5 on the dates agreed; and
  - 4.1.1.6 that comply with all Law.
- 4.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

#### **4.2 Goods clauses – Not Applicable**

#### **4.3 Services clauses**

- 4.3.1 Late Delivery of the Services will be a default of the Contract.
- 4.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including the security requirements (where any such requirements have been provided).



- 4.3.3 The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- 4.3.4 The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- 4.3.5 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 4.3.6 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 4.3.7 On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- 4.3.8 The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- 4.3.9 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **5 PRICING AND PAYMENTS**

- 5.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the charges in the Order Form.
- 5.2 All Charges:
  - 5.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 5.2.2 include all costs and expenses connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the invoice or in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
  - 5.4.1 includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer; and
  - 5.4.2 includes a detailed breakdown of Deliverables which have been delivered.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 36.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.

- 5.7 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

## **6 THE BUYER'S OBLIGATIONS TO THE SUPPLIER**

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
- 6.1.1 the Buyer cannot terminate the Contract under clause 11;
  - 6.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
  - 6.1.3 the Supplier is entitled to additional time needed to deliver the Deliverables; and
  - 6.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- 6.2.1 gives notice to the Buyer within 10 Working Days of becoming aware;
  - 6.2.2 demonstrates that the failure only happened because of the Buyer Cause; and
  - 6.2.3 mitigated the impact of the Buyer Cause.

## **7 RECORD KEEPING AND REPORTING**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the Audit.
- 7.4 The Buyer or an auditor can Audit the Supplier.
- 7.5 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.6 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Breach by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 7.7 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 7.7.1 tell the Buyer and give reasons;
  - 7.7.2 propose corrective action; and
  - 7.7.3 provide a deadline for completing the corrective action.

- 7.8 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- 7.8.1 require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
  - 7.8.2 if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for Material Breach (or on such date as the Buyer notifies) and the consequences of termination in Clause 11.5.1 shall apply.
- 7.9 If there is a Material Breach, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Material Breach. The Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires. Once such Rectification Plan is agreed between the Parties (without the Buyer limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.

## **8 SUPPLIER STAFF**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- 8.1.1 be appropriately trained and qualified;
  - 8.1.2 be vetted in accordance with the Staff Vetting Procedures; and
  - 8.1.3 comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where the Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
- 8.6 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:
- 8.6.1 requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 8.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or

8.6.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.

8.7 The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

## 9 RIGHTS AND PROTECTION

9.1 The Supplier warrants and represents that:

- 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
- 9.1.2 the Contract is entered into by its authorised representative;
- 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
- 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
- 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and the Buyer to receive the Deliverables;
- 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
- 9.1.7 it is not impacted by an Insolvency Event.

9.2 The warranties and representations in clause 3.3 and clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

9.3 The Supplier indemnifies the Buyer against each of the following:

- 9.3.1 wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract; and
- 9.3.2 non-payment by the Supplier of any tax or National Insurance.

9.4 If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Buyer.

9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

## 10 INTELLECTUAL PROPERTY RIGHTS (“IPRS”)

10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables; and
- make use of the deliverables provided by a Replacement Supplier.

- 10.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 10.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.
- 10.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- obtain for CCS and the Buyer the rights in Clause 10.1 and 10.2 without infringing any third party IPR; or
  - replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

## **11 ENDING THE CONTRACT**

- 11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

### **11.3 Ending the Contract without a reason**

- 11.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice, and if it's terminated clause 11.6.2 applies.

### **11.4 When the Buyer can end the Contract**

- 11.4.1 If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier and the consequences of termination in Clause 11.5.1 shall apply:

- 11.4.1.1 there's a Supplier Insolvency Event;
- 11.4.1.2 the Supplier is in Material Breach of the Contract;

- 11.4.1.3 there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - 11.4.1.4 the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
  - 11.4.1.5 the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
  - 11.4.1.6 the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.
- 11.4.2 If any of the events in 73(1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and clauses 11.5.1.2 to 11.5.1.7 apply.

## **11.5 What happens if the Contract ends**

- 11.5.1 Where the Buyer terminates the Contract under clause 10.9 11.4, 7.8.2, 28.4.2 all of the following apply:
- 11.5.1.1 the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;
  - 11.5.1.2 the Buyer's payment obligations under the terminated Contract stop immediately;
  - 11.5.1.3 accumulated rights of the Parties are not affected;
  - 11.5.1.4 the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
  - 11.5.1.5 the Supplier must promptly return any of the Buyer's property provided under the Contract;
  - 11.5.1.6 the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement; and
  - 11.5.1.7 the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- 11.5.2 The following clauses survive the expiry or termination of the Contract: 1, 5, 7, 8.4, 10, 11.5, 12, 14, 15, 16, 18, 19, 32.2.2, 36 and 37 and any clauses which are expressly or by implication intended to continue.

## **11.6 When the Supplier can end the Contract and what happens when the contract ends (Buyer and Supplier termination)**

- 11.6.1 The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

- 11.6.2 Where the Buyer terminates the Contract in accordance with clause 11.3 or the Supplier terminates the Contract under clause 11.6 or 23.4:
  - 11.6.2.1 the Buyer must promptly pay all outstanding charges incurred by the Supplier;
  - 11.6.2.2 the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
  - 11.6.2.3 clauses 11.5.1.2 to 11.5.1.7 apply.
- 11.6.3 The Supplier also has the right to terminate the Contract in accordance with Clauses 20.3 and 23.4.

## **11.7 Partially ending and suspending the Contract**

- 11.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 11.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- 11.7.3 The Parties must agree (in accordance with clause 25) any necessary variation required by clause 11.7, but the Supplier may not either:
  - 11.7.3.1 reject the variation; or
  - 11.7.3.2 increase the Charges, except where the right to partial termination is under clause 11.3.
- 11.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

## **12 HOW MUCH YOU CAN BE HELD RESPONSIBLE FOR**

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 100% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
  - 12.2.1 any indirect losses; and/or
  - 12.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
  - 12.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 12.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 12.3.3 any liability that cannot be excluded or limited by Law.

- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.4, 9.3.2, 10.5, or 32.2.2.
- 12.5 In spite of clause 12.1, the Buyer does not limit or exclude its liability for any indemnity given under clause 8.5.
- 12.6 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.7 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

### 13 OBEYING THE LAW

- 13.1 The Supplier, in connection with provision of the Deliverables:
  - 13.1.1 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier Code of Conduct v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form. The Buyer also expects to meet this Code of Conduct;
  - 13.1.2 must comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;
  - 13.1.3 must support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
  - 13.1.4 must comply with the model contract terms contained in (a) to (m) of Annex C of the guidance to [PPN 02/23 \(Tackling Modern Slavery in Government Supply Chains\)](#),<sup>1</sup> as such clauses may be amended or updated from time to time; and
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract.
- 13.3 The Supplier must appoint a compliance officer who must be responsible for ensuring that the Supplier complies with Law, clause 13.1 and clauses 27 to 34.

### 14 DATA PROTECTION AND SECURITY. NOT APPLICABLE

- 14.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via secure encrypted method upon reasonable request.

<sup>1</sup> <https://www.gov.uk/government/publications/ppn-0223-tackling-modern-slavery-in-government-supply-chains>



- 14.3 The Supplier must ensure that any Supplier, Subcontractor, or Subprocessor system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified in the Order Form or otherwise in writing by the Buyer (where any such requirements have been provided).
- 14.4 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 14.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
  - 14.5.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
  - 14.5.2 restore the Government Data itself or using a third party.
- 14.6 The Supplier must pay each Party's reasonable costs of complying with clause 14.5 unless the Buyer is at fault.
- 14.7 The Supplier:
  - 14.7.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within 10 Working Days of a written request;
  - 14.7.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 14.7.3 must securely destroy all storage media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers;
  - 14.7.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers; and
  - 14.7.5 indemnifies the Buyer against any and all losses incurred if the Supplier breaches clause 14 or any Data Protection Legislation.
- 14.8 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:
  - 14.8.1 "Controller" in respect of the other Party who is "Processor";
  - 14.8.2 "Processor" in respect of the other Party who is "Controller";
  - 14.8.3 "Joint Controller" with the other Party;
  - 14.8.4 "Independent Controller" of the Personal Data where the other Party is also "Controller",

in respect of certain Personal Data under the Contract and shall specify in Part A Authorised Processing Template of Annex 1 – Processing Personal Data which scenario they think shall apply in each situation.

**14.9 Where one Party is Controller and the other Party its Processor – Not applicable**

**14.10 Joint Controllers of Personal Data – Not applicable**

**14.11 Independent Controllers of Personal Data – Not applicable**

**15 WHAT YOU MUST KEEP CONFIDENTIAL**

**15.1 Each Party must:**

- 15.1.1 keep all Confidential Information it receives confidential and secure;
- 15.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
- 15.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

**15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:**

- 15.2.1 where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- 15.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- 15.2.3 if the information was given to it by a third party without obligation of confidentiality;
- 15.2.4 if the information was in the public domain at the time of the disclosure;
- 15.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
- 15.2.6 on a confidential basis, to its auditors or for the purposes of regulatory requirements;
- 15.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
- 15.2.8 to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

**15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.**

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

- 15.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;

- 15.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
- 15.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- 15.4.4 where requested by Parliament; and
- 15.4.5 under clauses 5.7 and 16.

- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Transparency Information, and Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable endeavours to ensure that Supplier Staff do not either.

## **16 WHEN YOU CAN SHARE INFORMATION**

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
  - 16.2.1 comply with any Request For Information
  - 16.2.2 if the Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.
- 16.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## **17 INSURANCE**

- 17.1 The Supplier shall ensure it has adequate insurance cover for this Contract.

## **18 INVALID PARTS OF THE CONTRACT**

- 18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

**19 OTHER PEOPLE'S RIGHTS IN THE CONTRACT**

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

**20 CIRCUMSTANCES BEYOND YOUR CONTROL**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- 20.1.1 provides written notice to the other Party; and
  - 20.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 20.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in Clauses 11.5.1.2 to 11.5.1.7 shall apply.
- 20.4 Where a Party terminates under clause 20.3:
- 20.4.1 each Party must cover its own losses; and
  - 20.4.2 clauses 11.5.1.2 to 11.5.1.7 apply.

**21 RELATIONSHIPS CREATED BY THE CONTRACT**

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

**22 GIVING UP CONTRACT RIGHTS**

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

**23 TRANSFERRING RESPONSIBILITIES**

- 23.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

- 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

## **24 SUPPLY CHAIN**

- 24.1 The Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 24.1.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 24.1.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 24.1.3 the proposed Subcontractor employs unfit persons.
- 24.2 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of all such Subcontractors at all levels of the supply chain including:
- 24.2.1 their name;
  - 24.2.2 the scope of their appointment; and
  - 24.2.3 the duration of their appointment.
- 24.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 24.4 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 24.4.1 where such Sub-Contracts are entered into after the Start Date, the Supplier will ensure that they all contain provisions that; or
  - 24.4.2 where such Sub-Contracts are entered into before the Start Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
    - 24.4.2.1 allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
    - 24.4.2.2 require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
    - 24.4.2.3 allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

- 24.5 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 24.5.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Buyer in writing;
  - 24.5.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 11.4;
  - 24.5.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
  - 24.5.4 the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
  - 24.5.5 the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Regulations.
- 24.6 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

## **25 CHANGING THE CONTRACT**

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

## **26 HOW TO COMMUNICATE ABOUT THE CONTRACT**

- 26.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.
- 26.2 Notices to the Buyer or Supplier must be sent to their address or email address in the Order Form.
- 26.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **27 DEALING WITH CLAIMS**

- 27.1 If a Beneficiary becomes aware of any Claim, then it must notify the Indemnifier as soon as reasonably practical.
- 27.2 at the Indemnifier's cost the Beneficiary must:
- 27.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim;
  - 27.2.2 give the Indemnifier reasonable assistance with the Claim if requested; and
  - 27.2.3 not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 27.3 The Beneficiary must:

- 27.3.1 consider and defend the Claim diligently and in a way that does not damage the Beneficiary's reputation; and
- 27.3.2 not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

## **28 PREVENTING FRAUD, BRIBERY AND CORRUPTION**

- 28.1 The Supplier shall not:
  - 28.1.1 commit any criminal offence referred to in 57(1) and 57(2) of the Regulations; or
  - 28.1.2 offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 28.2 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 28.1 and any fraud by the Supplier Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 28.3 If the Supplier notifies the Buyer as required by clause 28.2, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 28.4 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 28.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
  - 28.4.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and
  - 28.4.2 immediately terminate the Contract and the consequences of termination in Clause 11.5.1 shall apply.

## **29 EQUALITY, DIVERSITY AND HUMAN RIGHTS**

- 29.1 The Supplier must follow all applicable employment and equality Law when they perform their obligations under the Contract, including:
  - 29.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 29.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

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

### **30 HEALTH AND SAFETY**

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

### **31 ENVIRONMENT AND SUSTAINABILITY**

- 31.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:
- 31.1.1 meet, in all material respects, the requirements of all applicable Laws regarding the environment; and
  - 31.1.2 comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide, and make Supplier Staff aware of such policy.

### **32 TAX**

- 32.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 32.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
- 32.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 32.2.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 32.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains requirements that:



- 32.3.1 the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 32.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- 32.3.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- 32.3.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 32.2 or confirms that the Worker is not complying with those requirements; and
- 32.3.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

### **33 CONFLICT OF INTEREST**

- 33.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 33.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 33.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential conflict of interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 11.5.1.2 to 11.5.1.7 shall apply.

### **34 REPORTING A BREACH OF THE CONTRACT**

- 34.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of Law, clause 13.1, or clauses 27 to 33.
- 34.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 34.1 to the Buyer or a Prescribed Person.

### **35 FURTHER ASSURANCES**

- 35.1 Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

### **36 RESOLVING DISPUTES**

- 36.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.

- 36.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 36.3 to 36.5.
- 36.3 Unless the Buyer refers the dispute to arbitration using clause 36.4, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction. :
- 36.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 36.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 36.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 36.4.
- 36.6 The Supplier cannot suspend the performance of the Contract during any dispute.

### **37 WHICH LAW APPLIES**

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

## IV. Annex 1 – Service Level Agreement

### SuperStar and Additional Layer Support Service

Support cases may be logged with WingArc Australia Customer Support through any of the following means:

Method	Availability	Region	Contact
<b>Support Portal (Preferred Contact Method)</b>	<b>24x7x365</b>	<b>All</b>	<a href="https://support.spacetimeresearch.com">https://support.spacetimeresearch.com</a>
Email	24x7x365	All	<a href="mailto:support@spacetimeresearch.com">support@spacetimeresearch.com</a>
Phone	Operating Hours, 08:00 until 18:00 Melbourne Local Time, excluding weekends and public holidays	All	+61 9615 5200

The best way to log a support request is through our Support Portal <https://support.spacetimeresearch.com>. Using the portal will enable us to respond to your request as quickly and efficiently as possible and allows you to track all your support requests in one place. To help us provide the best service, please include the following details:

- The business impact and context of the problem, including any project schedules at risk. This should be stated as a severity level drawn from Table 2 below.
- The SuperSTAR software version in use.
- Details of the server and client environments, such as operating system and patch level.
- Any error messages you have received.
- The timing and frequency of the issue.
- The steps needed to reproduce the problem.
- Details of recent changes to your system environment.
- The sample database or files that can be used to reproduce the issue (preferably using one of the SuperSTAR's sample databases).
- If your organization has an issue tracking system, then its relevant case number.

All cases will be assigned a case reference number. If the case is lodged via email to [support@spacetimeresearch.com](mailto:support@spacetimeresearch.com), an automated response will be provided with a unique support request reference number. If you lodge a support request via other means, you will be advised of the reference number. Please note your number and state it when making any future contact with WingArc Australia on the same matter.

### Severity Levels

Severity Level	Description
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<b>Severity 1</b>	A critical, high-impact issue (typically a product is inoperable) resulting in a major disruption to key business operations. A workaround or fix is either not available or has not yet been identified. Note: Where practical you should contact the WingArc Australia Customer Support Center via telephone as well as email if you believe you are experiencing a severity 1 issue.
<b>Severity 2</b>	A major issue that results in a significant disruption to the current business operation. The product, however, generally remains operable.
<b>Severity 3</b>	An issue that does not prevent system operation. An acceptable workaround is available or a workaround is not required.
<b>Severity 4</b>	Use of the SuperSTAR solution is unaffected. Generally covers requests for information, software and key requests, and most requests for new product features and enhancements.

### Response time for Severity Levels

WingArc Australia operates to response-based Service Levels as follows:

- Severity 1 issues: response within one business day
- Severity 2 issues: response within two business days
- Severity 3 issues: response within four business days
- Severity 4 issues: response within five business days

A response is a reply from WingArc Australia Customer Support to the customer that:

- requests additional information necessary to progress the support case, or
- provides suggested steps to take that will progress the case to resolution (i.e. a solution or workaround to the support case), or
- provides a status update for issues that have been escalated to the Development team.

### Case handling and resolution processes

Your case is regularly reviewed and the status updated, as per table below. You can obtain the status of a case by

- accessing our support web portal at <https://support.spacetime research.com>
- contacting customer support via phone or email [support@spacetime research.com](mailto:support@spacetime research.com)

Case Status	Description
<b>New</b>	The case has yet to be assigned to a support consultant.
<b>Open</b>	WingArc Australia Customer Support is working on the case.

<b>Pending</b>	<p>The support request is open but waiting for the completion of an event before it can be actioned any further. Possible reasons for this status include the following:</p> <ul style="list-style-type: none"> <li>○ Resolution of a defect, waiting on release of a product update.</li> <li>○ Enhancement request, waiting on WingArc Australia review or scheduling.</li> <li>○ Waiting on information from you or for the problem to be reproduced.</li> </ul>
<b>Solved</b>	The case has been closed for one of the reasons outlined in on page 9.

### Addressing software defects

A software defect is a reproducible, persistent error that prevents a program from delivering documented functionality.

If you are reporting a potential product defect, the WingArc Australia support consultant will check to see if your problem has been reported previously and if a fix is available.

If it is not a known defect, the support consultant will attempt to replicate the issue. To assist in the replication of an issue, the consultant may request log files, error messages and data from you. They may also ask to access your system remotely, assuming it acceptable to you. Please also note that any generated dump files may contain confidential data depending on the situation that caused the issue. If these are required to diagnose an issue, the consultant can advise on the type of data that may be included and if there are steps that can be taken to eliminate it.

If a reported issue is found to be caused by a defect in a SuperSTAR product, the problem is escalated to Product Development for assessment and resolution. The goal for the resolution of product issues will generally depend on the severity level of that issue. The goals are described in the following table:

Priority	Rectification Target
<b>Severity 1</b>	A fix is typically supplied as a patch or update to the installed SuperSTAR version, provided the release's Maintenance Support Period has not expired (see page 5) and any specifically required versions of operating systems, databases, etc. are still supported by the 3rd party product's vendor(s).
<b>Severity 2</b>	A fix is typically provided in the next scheduled Generally Available (GA) release.
<b>Severity 3</b>	The support consultant will advise you of the target release for resolution of the software defect as soon as the release is identified by Product Development. In some circumstances Severity 3 defects may not be addressed.

**Product enhancements**

All product enhancement requests are referred to a Product Change Board and assessed as to their broader customer benefit and alignment to the Product Roadmap. Whilst every product enhancement request is given serious consideration, it will be at WingArc Australia's sole discretion whether an enhancement request is scheduled.

**Remote diagnostics**

To make it easier and faster to investigate and resolve your issue, the support consultant may ask you to allow us to access your SuperSTAR environment using a remote support tool to:

- investigate and analyze problems you may be experiencing with WingArc Australia software.
- assist you with such problem diagnosis and/or resolution.
- explain and/or demonstrate how to use WingArc Australia software.

In this situation, the support consultant will discuss with you process and appropriate tools.

When this option is not feasible, our Customer Support Center will work with you to develop a synthetic database. This will allow you and WingArc Australia to investigate issues using a common data set.

## V. Annex 2 – WingArc Australia Software Licence Agreement

This Software Licence Agreement (**Agreement**) is made on the date set out in the Order Form (**Effective Date**) and is between:

- **WingArc Australia Pty Ltd** (ABN 98 006 559 191), a Company duly incorporated in the State of Victoria in the Commonwealth of Australia with its principal business address at Level 7, 360 Collins Street, Melbourne, VIC 3000, Australia, e-mail admin@wingarc.com.au (**WAA**)

and

- the **Licensee** whose details are set out in the Order Form (**Licensee**)

### Background

- Licensee has requested that WAA grant to it a licence to use the software described in the Order Form (**Software**).
- WAA has agreed to grant Licensee a limited licence to use the Software at the site location set out in the Order Form (**Site Location**) in consideration for payment of and the fees set out in the Order Form (**Fees**).

### It is agreed

- Grant of Licence.** In consideration of payment of the Fees, WAA grants to Licensee, and Licensee accepts, a limited, non-exclusive licence to install and use, during the period during which this Agreement remains in force (**Term**), the Software at the Site Location, on, and subject to Licensee complying with, the terms and conditions of this Agreement (**License**). The Software is licensed, not sold and all rights (including any intellectual property rights), in and to the Software and accompanying printed materials and any copies of the Software and materials are owned by WAA or third parties. WAA reserves all rights not expressly granted to Licensee in this Agreement. This Agreement is to be read in conjunction with any documentation made available by WAA in connection with the Software (including any instructions downloadable from the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>). Such documentation is incorporated into this Agreement by reference, to the extent not inconsistent with this Agreement. By installing, copying, downloading, accessing or otherwise using the Software, Licensee agrees to be bound by the terms of this Agreement.
- Payment.** Licensee must pay the Fees in accordance with item 12 of the Order Form.
- Licensee acknowledgements.** Licensee acknowledges that:
  - the function for which the Software is licensed is to allow conversion of Licensee's data into databases in WAA's proprietary data format (**Cubes**), and analysis of such Cubes, and dissemination of information from such analysis, and the Licence comprises such use, and no other use;
  - on termination of this Agreement, it will cease to have the right to access and analyse Cubes, nor to allow third parties to access or analyse Cubes and that any such rights will only exist pursuant to any further licence granted by WAA, at its discretion, and for such further fees and on such other terms as may be agreed;
  - for the avoidance of doubt, on termination of this Agreement, it must take such action as WAA requests to give effect to the preceding paragraph;
  - any breach of this clause would cause WAA irreparable harm and damages would not be an adequate remedy for any such breach, such that if it actually breaches or threatens to breach this clause, WAA will be entitled to enforce this Agreement by injunctive relief or specific performance as a remedy (in addition to other available relief) without proof of actual or special damage; and
  - if this licence includes SuperTABLE, WAA may, at its discretion, grant licences to the public at large or persons of a certain class, under the SuperTABLE module, to access and further analyse Cubes made available to such persons by Licensee. The current terms of WAA's SuperTABLE licence are set out at the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>), and WAA may, without notice, amend such terms, and terminate, such licences as it sees fit.

4. **WAA acknowledgement.** WAA acknowledges that it acquires no rights in any Cubes, other than a non-exclusive licence to store same, on servers maintained by or on behalf of WAA, to the extent necessary to give effect to this Agreement. Further terms applicable to such server storage are set out at the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>. WAA may, not more than once in any calendar year and on not less than two days notice, audit Licensee's use of the Software to ensure compliance with this Agreement.
5. **Back-up Copy.** Licensee may make a single back-up copy of the Software and use such back-up copy solely for archival purposes and to reinstall the Software at the Site Location if the initial installation at the Site Location ceases to operate for any reason. Except as expressly permitted by the local law of the Site Location, Licensee must not otherwise make copies of the Software. Despite the foregoing, Licensee must not loan, rent, license, lend or otherwise transfer the Software or back-up copy to any person without WAA's prior written consent (to be given, with or without conditions, or withheld at WAA's absolute discretion). Except as otherwise expressly provided in this clause, Licensee must not install, use, access, display or run the Software at any location other than the Site Location.
6. **Limitations on Reverse Engineering etc.** Licensee must not, and must not allow others to, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify or create derivative works of the Software, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be expressly permitted by this Agreement).
7. **Third party software.** Portions of the Software use or include third party software and other copyrighted material set out at the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>. Licensee agrees to not install nor use such third party software and other copyrighted material other than to the extent necessary to use and install the Software in accordance with this Agreement. Despite the preceding sentence, Licensee agrees not to install nor use such third party software and other copyrighted material contrary to any provisions set out at the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>.
8. **Downloads, upgrades, new versions.** Licensee may make such copies of printed materials accompanying the Software (including material available for download through access to the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>, or any website accessed via that website) as is reasonably necessary to properly exercise the Licence. Licensee acknowledges that all such copies remain WAA's property and all such downloads are undertaken, and materials used, at Licensee's own discretion and risk and that it is solely responsible for any damage to any computer, system or network or loss of data arising in relation to such activities. The Software does not include phone or other support, nor any entitlement to upgrades, bug-fixes or further versions (which support, upgrades, bug-fixes or further versions WAA may make available at its discretion), save that WAA agrees to provide the services (including support pursuant to the Customer Support Guide applicable from time to time), if any, as specified in the Order Form (**Services**).
9. **Term and termination.** This Agreement will commence on the Effective Date and, unless terminated earlier, will continue in force for the initial term specified in the Order Form (**Initial Term**), and on expiration of the Initial Term this Agreement will be deemed renewed for subsequent terms each of the duration specified in the Order Form (each a **Renewal Term**), unless one of the parties provides written notice of termination to the other not less than 60 days before the expiration date of the Initial Term or then current Renewal Term. Either party may provide such notice entirely in its discretion, and with or without cause and without any liability. In no event shall any provision of this Agreement operate to characterise this Agreement as being a perpetual agreement. Without prejudice to any other rights WAA may have under this Agreement or at law, this Agreement will terminate without notice to Licensee if Licensee breaches any provision of this Agreement. On termination of this Agreement, WAA has no obligation to refund any Fees and Licensee must uninstall and destroy all copies of the Software (including any parts of the Software) and all Cubes, then in its possession custody or control. All clauses which by their nature, including clauses 3, 6, 10, 11, 12 and 13, and any rights or obligations which have accrued before this Agreement ends, will continue in accordance with their terms.
10. **Confidentiality and public attribution.** The terms of this Agreement and all information relating to WAA of which Licensee becomes aware (**Confidential Information**) are confidential to WAA and Licensee must keep the Confidential Information secret, secure and confidential, and must not, without



the prior written consent of WAA disclose, communicate, or otherwise make known to any person any part of the Confidential Information nor use the Confidential Information other than solely for the purpose of, and to the extent necessary, to give effect to this Agreement. On termination of this Agreement or earlier request by WAA, Licensee must, at its cost, deliver to WAA or destroy (at WAA's option) any and all embodiments of Confidential Information (including in electronic form) that may be in its possession or control and Licensee's obligations in this clause 10 will continue in force in respect of each piece of Confidential Information until Licensee can prove such piece has become part of the public domain otherwise than by a breach of an obligation of confidence owed to STR. Licensee must not make any public announcement or other communication relating to WAA or the Software without WAA's prior written approval.

11. **Consent to collection and use of data.** WAA may use any information provided by Licensee pursuant to this Agreement to give effect to this Agreement, but must ensure that any use of personal information is in accordance with its then current privacy policy, which at the Effective Date is available at the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)> and incorporated into this Agreement by reference.
12. **Disclaimers.** To the maximum extent permitted by applicable law, the Software and Services are provided "as is" and "as available" and without representation or warranty of any kind and WAA (which for the purposes of this clause 12 and clause 13, includes any third party providers referred to in clause 7) disclaims all representations and warranties with respect to the Software and Services, whether express, implied or statutory, including any implied warranties of due care and skill, merchantability, satisfactory quality and fitness for a particular purpose. Licensee has relied on its own skill and judgement in deciding to acquire the Licence and Services and acknowledges that no representation or warranty has been made or given by WAA to any person or company on its behalf in relation to the profitability of the Software or Services or any other consequences or benefits to be obtained from the use of the Software and any accompanying printed materials, or the Services. WAA further disclaims any representation or warranty that the use of the Software will not infringe any third party rights, or be uninterrupted or error-free, that any service or Services will continue to be made available, that defects in the Software will be corrected, or that the Software will be compatible or work with any third party software or services. Licensee acknowledges that installation of the Software may affect the usability and interoperability of third party software or services.
13. **Limitation of liability.** To the extent not prohibited by applicable law, in no event will WAA be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including damages for loss of profits, corruption or loss of data, failure to transmit or receive any data, business interruption or any other commercial damages or losses, arising out of or related to Licensee's use of, or inability to use, the Software or any third party software in conjunction with the Software or otherwise related in any way to this Agreement, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if WAA has been advised of the possibility of such damages. To the extent not prohibited by applicable law, in no event will WAA's total liability to Licensee for all damages exceed the amount of the Initial Term Fee set out in the Order Form. Where any legislation implies in the Agreement any term, condition or warranty, and also renders void any provision in a contract which purports to exclude or modify the application or exercise of, or liability under, such term, condition or warranty, such term, condition or warranty will be deemed to be included in the Agreement, however, WAA's liability for any breach of such term, condition or warranty will be limited, at WAA's option, to any one or more of the following:
  - (a) if the breach relates to goods:
    - (i) the replacement of the goods or supply of equivalent goods;
    - (ii) the repair of such goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) if the breach relates to services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again
14. **Force Majeure.** Failure by either party to perform its obligations under this Agreement (other than payment obligations), which arises from a cause(s) beyond its reasonable control, including labour

disturbance, virus, Trojan horse, cancel bot, or other harmful code or component, communication outage, Internet outage, interruption of service, denial of service attack, breach of contract by a third party provider of goods or services (including software) to WAA, fire, threatened or actual act of terrorism, war, natural disaster or act of nature (**Force Majeure**), shall not be deemed a breach of this Agreement. In such event, this Agreement shall continue in full force and effect, provided that if the Force Majeure continues for longer than six (6) months duration, either party may terminate this Agreement on written notice.

15. **Entire Agreement.** Licensee acknowledges and confirms that prior to signing this Agreement it has carefully perused all provisions set out in this Agreement, including the Order Form and Annexure. Licensee further acknowledges that:
  - (a) this Agreement is to be read in conjunction with any documentation made available by WAA in connection with the Software (including any instructions downloadable from the WAA website <[www.wingarc.com.au](http://www.wingarc.com.au)>) and such documentation is incorporated into these terms and conditions by reference, to the extent not inconsistent with these terms and conditions; and
  - (b) this Agreement (including the Order Form and Annexure) constitutes the entire understanding between it and WAA and that it supersedes all proposals, representations and communications, oral or written, passed between the parties with respect to the Software.
16. **Assignment and sub-licensing.** The Licence is personal to Licensee and Licensee must not grant any sub-licenses nor assign any part of the burden or benefit of this Agreement, without WAA's prior written consent. Licensee must execute a novation of WAA's rights and obligations under this Agreement to a related body corporate of WAA or to a third party acquiring or all or a substantial part of WAA's assets. This Agreement will be binding on, and endure for the benefit of, each party and their respective successors in title and permitted assigns.
17. **Notices.**
  - (a) A notice or consent under this Agreement is only effective if it is:
    - (i) in writing, signed by or on behalf of the person giving it;
    - (ii) addressed to the person to whom it is to be given; and
    - (iii) either:
      - a. delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
      - b. sent by e-mail to that person's e-mail address and the machine from which it is sent does not immediately produce an error report.
  - (b) A notice or consent that complies with this clause 17 is regarded as given and received:
    - (i) if it is delivered or sent by e-mail:
      - (A) before 5.00 pm on a day which is a day when banks are generally open for business at the place of receipt (**Business Day**), - on that day; or
      - (B) on a day which is not a Business Day, or after 5.00 pm on a Business Day - on the next Business Day; and
    - (ii) if it is sent by mail:
      - (A) within Australia – three Business Days after posting; or
      - (B) to or from a place outside Australia – seven Business Days after posting,
  - (c) WAA's details for receiving notices and consents are set out in the Parties section. Licensee's details for receiving notices and consents are set out in the Order Form, with notices to be addressed to the person named as Contract Liaison Person.
18. **Anti-Corruption**
  - (a) Each party shall comply with all applicable anti-corruption laws and regulations, including the United States Foreign Corrupt Practices Act ("FCPA"), the United Kingdom Bribery Act 2010 ("UKBA"), the Japanese Unfair Competition Prevention Act ("JUCPA") and any corresponding laws of all countries where business or services will be conducted or performed pursuant to this Agreement, and shall not, directly or indirectly through a third party, pay, offer, promise to pay, or give anything of value to any person, including an employee or official of a government, government controlled enterprise or company, or political party, for the purpose of or knowing that it

will be used for obtaining any improper benefit or to improperly influence any act or decision by such person or party for obtaining, retaining, or directing business.

- (b) Each party as of the effective date of the Agreement, represents and warrants that:
  - (i) it has not violated, nor has been found by any governmental authority to have violated, the FCPA, the UKBA, the JUCPA or any other applicable anti-corruption laws and regulations, and
  - (ii) it has no knowledge or reason to believe that any governmental authority is considering any proceeding related to any of the foregoing.
- (c) In the event that the party comes to have knowledge of any potential violation of the FCPA, the UKBA, the JUCPA or any other applicable anti-corruption laws and regulations, it shall immediately notify the other party thereof in writing.
- (d) Each party may terminate the Agreement, without penalty, if it reasonably believes that the other party is in violation of the FCPA, the UKBA, the JUCPA or other applicable anti-corruption laws and regulations.

## 19. General.

- (a) **Costs.** Each party must bear and is responsible for its own costs in connection with the preparation, execution and carrying into effect of this Agreement.
- (b) **Amendment.** This Agreement cannot be varied unless in writing and signed on behalf of both parties and the variation must specifically refer to its intention to supersede this Agreement.
- (c) **Counterparts.** This Agreement may be executed in counterparts. All counterparts together will be taken to constitute one instrument.
- (d) **Nature of relationship.** Nothing in this Agreement and no action taken by a party pursuant to this Agreement will constitute or be deemed to constitute a partnership association, joint-venture or other co-operative entity between the parties and neither party will have any authority to bind the other in any way.
- (e) **Severability.** Any provision of this Agreement which is unenforceable or partly unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make this Agreement enforceable. Any such severability does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (f) **Waiver of rights.** A right may only be waived in writing, signed by the party giving the waiver, and:
  - (i) no other conduct of a party (including a partial exercise of, a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
  - (ii) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
  - (iii) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 20. Construction.

In this Agreement, the following rules of construction apply.

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) The Background forms an integral part of this Agreement and shall be construed accordingly.
- (c) The words **includes** and **including** are not words of limitation.
- (d) If the date on or by which any act must be done under this Agreement is not a day when banks are generally open for business in Victoria, Australia (**Business Day**), the act must be done on or by the next Business Day.
- (e) A reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
- (v) a clause, Schedule or Annexure is a reference to a clause, Schedule or Annexure, as the case may be, of this Agreement.

## VI. SCHEDULE 1 – Minimum Security Requirements

### GENERAL

The Contractor shall, any Sub-contractor (as applicable) shall, comply with the Authority's security requirements as set out in the Contract which include the requirements set out in this Schedule 1 to the Contract (the **"Authority's Security Requirements"**). The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Contractor's Systems Environment.

Terms used in this Schedule 1 which are not defined below shall have the meanings given to them in clause A1 (Definitions and Interpretations) of the Contract.

### 1. DEFINITIONS

1.1 In this Schedule 1, the following definitions shall apply:

**"Authority Personnel"** shall mean all persons employed by the Authority including directors, officers, employees together with the Authority's servants, agents, consultants, contractors and suppliers but excluding the Contractor and any Sub-contractor (as applicable).

**"Availability Test"** shall mean the activities performed by the Contractor to confirm the availability of any or all components of any relevant ICT system as specified by the Authority.

**"CHECK"** shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.

**"Cloud"** shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.

**"Cyber Essentials"** shall mean the Government-backed, industry-supported scheme managed by the NCSC to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.

**“Cyber Security Information Sharing Partnership” or “CiSP”**

shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.

**“Good Security Practice”**

shall mean:

- a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);
- b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and
- c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.

**“Information Security”**

shall mean:

- a) the protection and preservation of:
  - i) the confidentiality, integrity and availability of any Authority Assets, the Authority’s Systems Environment (or any part thereof) and the Contractor’s Systems Environment (or any part thereof);
  - ii) related properties of information including, but not limited to,

authenticity, accountability, and non-repudiation; and

- b) compliance with all Law applicable to the processing, transmission, storage and disposal of Authority Assets.

**“Information Security Manager”** shall mean the person appointed by the Contractor with the appropriate experience, authority and expertise to ensure that the Contractor complies with the Authority’s Security Requirements.

**“Information Security Management System (“ISMS”)** shall mean the set of policies, processes and systems designed, implemented and maintained by the Contractor to manage Information Security Risk as specified by ISO/IEC 27001.

**“Information Security Questionnaire”** shall mean the Authority’s set of questions used to audit and on an ongoing basis assure the Contractor’s compliance with the Authority’s Security Requirements.

**“Information Security Risk”** shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.

**“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301”** shall mean

- a) ISO/IEC 27001;
- b) ISO/IEC 27002/IEC; and
- c) ISO 22301

in each case as most recently published by the International Organization for Standardization or its successor entity (the “ISO”) or the relevant successor or replacement information security standard which is formally recommended by the ISO.

**“NCSC”** shall mean the National Cyber Security Centre or its successor entity (where applicable).

**“Penetration Test”** shall mean a simulated attack on any Authority Assets, the Authority’s Systems Environment (or

any part thereof) or the Contractor's Systems Environment (or any part thereof).

**"PCI DSS"** shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the **"PCI"**).

**"Risk Profile"** shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.

**"Security Test"** shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.

**"Tigerscheme"** shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.

**"Vulnerability Scan"** shall mean an ongoing activity to identify any potential vulnerability in any Authority Assets, the Authority's Systems Environment (or any part thereof) or the Contractor's Systems Environment (or any part thereof).

1.2 Reference to any notice to be provided by the Contractor to the Authority shall be construed as a notice to be provided by the Contractor to the Authority's Representative.

## **2. PRINCIPLES OF SECURITY**

2.1 The Contractor shall at all times comply with the Authority's Security Requirements and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

## **3. ISO/IEC 27001 COMPLIANCE AND AUDIT – Not applicable**

## **4. CYBER ESSENTIALS SCHEME**

4.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the "Cyber Essentials Certificate") in relation to the Services during Contract Period. The Cyber Essentials Certificate shall be provided by the Contractor to the Authority annually on the dates as agreed by the Parties.



- 4.2 The Contractor shall notify the Authority of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within 2 Working Days of confirmation of such failure or revocation. The Contractor shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate during the Contract Period after the first date on which the Contractor was required to provide a Cyber Essentials Certificate in accordance with paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a Material Breach.

## 5. RISK MANAGEMENT

- 5.1 The Contractor shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the Contract Period which includes standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the Authority's Security Requirements are met (the **Risk Assessment**). The Contractor shall provide the Risk Management Policy to the Authority upon request within 10 Working Days of such request. The Authority may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Authority's Security Requirements. The Contractor shall, at its own expense, undertake those actions required in order to implement the changes required by the Authority within one calendar month of such request or on a date as agreed by the Parties.
- 5.2 The Contractor shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Contractor's Systems Environment or in the threat landscape or (iii) at the request of the Authority. The Contractor shall provide the report of the Risk Assessment to the Authority, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Contractor shall notify the Authority within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Authority decides, at its absolute discretion, that any Risk Assessment does not meet the Authority's Security Requirements, the Contractor shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, co-operate with the Authority in relation to the Authority's own risk management processes regarding the Services.
- 5.5 For the avoidance of doubt, the Contractor shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 5. Any failure by the Contractor to comply with any requirement of this paragraph 5 (regardless of whether such failure is capable of remedy), shall constitute a Material Breach.

## 6. SECURITY AUDIT AND ASSURANCE

- 6.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Authority (the “**Information Security Questionnaire**”) at least annually or at the request by the Authority. The Contractor shall provide the completed Information Security Questionnaire to the Authority within one calendar month from the date of request.
- 6.2 The Authority shall be entitled to send the Authority’s Representative to witness the conduct of any Security Test. The Contractor shall provide to the Authority notice of any Security Test at least one month prior to the relevant Security Test.
- 6.3 Where the Contractor provides code development services to the Authority, the Contractor shall comply with the Authority’s Security Requirements in respect of code development within the Contractor’s Systems Environment and the Authority’s Systems Environment.
- 6.4 Where the Contractor provides software development services, the Contractor shall comply with the code development practices specified in the Specification or in the Authority’s Security Requirements.
- 6.5 The Authority, or an agent appointed by it, may undertake Security Tests in respect of the Contractor’s Systems Environment after providing advance notice to the Contractor. If any Security Test identifies any non-compliance with the Authority’s Security Requirements, the Contractor shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Authority at its absolute discretion. The Contractor shall provide all such co-operation and assistance in relation to any Security Test conducted by the Authority as the Authority may reasonably require.
- 6.6 The Authority shall schedule regular security governance review meetings which the Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, attend.

## 7. PCI DSS COMPLIANCE AND CERTIFICATION – Not applicable

## 8. SECURITY POLICIES AND STANDARDS

- 8.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, comply where applicable to the services provided by the Supplier with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Authority’s Security Requirements applicable to the Services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. Where any such change constitutes a

Contract Change, any change in the Authority's Security Requirements resulting from such Contract Change (if any) shall be agreed by the Parties in accordance with the Contract Change Procedure. Where any such change constitutes an Operational Change, any change in the Authority's Security Requirements resulting from such Operational Change (if any) shall be agreed by the Parties and documented in the relevant Operational Change Confirmation.

- 8.3 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

## **9. CYBER SECURITY INFORMATION SHARING PARTNERSHIP**

- 9.1 The Supplier may require a nominated representative of the Supplier to join the Cyber Security Information Sharing Partnership on behalf of the Supplier during the Term, in which case the Supplier's nominated representative shall participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 If the Supplier elects a nominated representative to join the Cyber Security Information Sharing Partnership in accordance with Paragraph 9.1 above, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Supplier's Risk Management Policy.

## **ANNEX A – AUTHORITY SECURITY POLICIES AND STANDARDS**

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>  
unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Personnel Security Policy
- d) Physical Security Policy
- e) Information Management Policy
- f) Email Policy
- g) Technical Vulnerability Management Policy
- h) Remote Working Policy
- i) Social Media Policy
- j) Forensic Readiness Policy
- k) Microsoft Teams recording and transcription policy
- l) SMS Text Policy
- m) Privileged Users Security Policy
- n) Protective Monitoring Security Policy
- o) User Access Control Policy
- p) Security Classification Policy
- q) Cryptographic Key Management Policy
- r) HMG Personnel Security Controls – May 2018  
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)

s) NCSC Secure Sanitisation of Storage Media (published  
<https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

on

## ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) Security Standard Physical and Electronic Security (Part 1)
- d) SS-002 - PKI & Key Management
- e) SS-003 - Software Development
- f) SS-005 - Database Management System
- g) SS-006 - Security Boundaries
- h) SS-007 - Use of Cryptography
- i) SS-008 - Server Operating System
- j) SS-009 - Hypervisor
- k) SS-010 - Desktop Operating System
- l) SS-011 - Containerisation
- m) SS-012 - Protective Monitoring Standard for External Use
- n) SS-013 - Firewall Security
- o) SS-014 - Security Incident Management
- p) SS-015 - Malware Protection
- q) SS-016 - Remote Access
- r) SS-017 - Mobile Devices
- s) SS-018 - Network Security Design
- t) SS-019 - Wireless Network
- u) SS-022 - Voice & Video Communications
- v) SS-023 - Cloud Computing
- w) SS-025 - Virtualisation
- x) SS-027 - Application Security Testing
- y) SS-028 - Microservices Architecture
- z) SS-029 - Securely Serving Web Content
- aa) SS-030 - Oracle Database
- bb) SS-031 - Domain Management
- cc) SS-033 – Security Patching
- dd) SS-035 – Backup and Recovery
- ee) SS-036 – Secure Sanitisation and Destruction