



## Call-off Terms and Conditions

### PRECEDENCE OF DOCUMENTS

If there is any conflict or inconsistency between documents such conflict or inconsistency shall be resolved according to the following order of priority:

- the Order Form;
- clauses of the Contract (these terms).

### 1. DEFINITIONS

Schedule 1 In the Contract, unless the context otherwise requires, the following provisions have the meanings given to them below:

**Approval:** means the prior written approval of the Authority.

**Auditor:** means the National Audit Office or an auditor appointed by the Authority as the context requires.

**Authorised Representative:** the persons respectively designated as such by the Authority and the Supplier in the Order Form.

**Authority:** the Secretary of State for Education.

**Commencement Date:** the service commencement date set out in the Order Form.

**Contract:** these call-off terms and conditions.

**Contract Period:** the period from the Commencement Date to:

- the date of expiry set out in clause 3;
- following an extension pursuant to clause 4, the date of expiry of the extended period; or
- such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**Contract Year:** a period of 12 months starting on the Commencement Date.

**Copyright** means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “**Crown Body**” is an emanation of the foregoing.

**Data Protection Legislation:** means the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal

data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Default:** means any breach of the obligations of the relevant Party under the Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Supplier's staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**DPA:** means the Data Protection Act 2018.

**Database Rights** means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**Deliverables:** those deliverables listed in the Order Form.

**Dispute Resolution Procedure:** the dispute resolution procedure in clause 43.

**DPS:** means the dynamic purchasing system established by the Authority for the appointment of suppliers to deliver the Services, including the Supplier, pursuant to regulation 34 of the Regulations.

**EIR:** mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equipment:** the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Supplier's organisation.

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679).

**Good Industry Practice:** standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances.

**Month:** a calendar month.

**Order:** an order for Services sent by the Authority to the Participant.

**Order Form:** a document setting out details of an Order in the form set out in Redimo.

**Party:** either the Authority or the Supplier.

**Premises:** locations belonging to or operated by the Authority.

**Price:** the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract.

**Professional:** means an employee of the Supplier named in the Order Form who has been selected to provide the Services.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
- induce that person to perform improperly a relevant function or activity; or
  - reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- committing any offence:
- under the Bribery Act 2010;
  - under legislation creating offences concerning fraudulent acts;
  - at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
- defrauding, attempting to defraud or conspiring to defraud the Authority.

**Property:** the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Contract.

**Quality Standards:** the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

**Redimo:** the Authority's electronic procurement and contract management system

**Regulations:** means the Public Contracts Regulations 2015 (*SI 2015/102*).

**Replacement Supplier:** any third party service provider appointed by the Authority to supply any services that are substantially the same as or similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**RFQ:** means a request for quotation following which the Supplier was awarded the Contract.

**Services:** means the services described in the Order Form.

**Staff:** means the directors, officers, employees, consultants, agents, professional advisors of the Supplier or the directors, officers, employees of its subcontractors, consultants, agents or professional advisors.

**Staff Vetting Procedures:** the Authority's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;
- (c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

**Supplier:** the supplier registered on the DPS who has been accepted an Order.

**Tender:** means the quotation documents submitted by the Supplier to the Authority in response to an RFQ.

**Unrecovered Costs:** means any costs (such as the Supplier's own redundancy costs, and costs payable for early termination of contracts entered into by the Supplier prior to receipt of the termination notice) incurred by the Supplier directly as a result of the termination of

this Agreement which: (a) would not have been incurred had this Agreement continued until its natural expiry; (b) are unavoidable, proven, reasonable, and not capable of recovery; and (c) are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms.

**Variation:** has the meaning given to it in clause 30.

**VAT:** value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**Working Days:** means any day other than a Saturday, Sunday or public holiday in England and Wales.

## **2 INTERPRETATION**

2.1 The interpretation and construction of the Contract shall be subject to the following provisions:

- a. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b. words importing the masculine include the feminine and the neuter;
- c. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- d. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- e. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- f. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- g. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- h. references in the Contract to any clause or sub-clause or without further designation shall be construed as a reference to the clause or sub-clause to the Contract so numbered.

## **3. CONTRACT EXECUTION**

- 3.1 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is executed and takes effect on the date on which both Parties communicate acceptance of its terms on Redimo.

Schedule 2 3.2 The Contract shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract.

## **4. EXTENSION OF CONTRACT PERIOD**

Schedule 3 The Authority may extend the Contract for any further period or periods specified in the Order Form. The provisions of the Contract shall apply throughout any such extended period.

## **5. SUPPLIER'S STATUS**

Schedule 4 At all times the Supplier shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the Contract.

## **6. AUTHORITY'S OBLIGATIONS**

Schedule 5 Except as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Supplier.

## **7. MISTAKES IN INFORMATION**

Schedule 6 The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Authority by the Supplier in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **8. SERVICES**

- 8.1 The Supplier shall supply the Services in accordance with the Authority's requirements as set out in the Contract in consideration for the payment of the Price. The Authority may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.2 The Supplier acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Application so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.3 The Supplier shall:
  - 8.3.1 at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - 8.3.2 to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Authority before the supply of the Services; and
  - 8.3.3 at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
  - 8.3.4 ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
  - 8.3.5 supply the Services in a timely manner, subject to Approval being given by the Authority in reasonable time.

## **9. PROVISION AND REMOVAL OF EQUIPMENT**

- 9.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Supplier shall not deliver any Equipment or begin any work on the Premises without Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- 9.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 On completion of the Services, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any

damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **10. PROFESSIONALS**

### **10.1 Where the Supplier is not an individual:**

- 10.1.1 the Parties have agreed that the Professional shall provide the Services on behalf of the Supplier. The Supplier shall obtain Approval before removing or replacing the Professional and, where possible, the Supplier shall give the Authority at least one Month's written notice of its intention to replace the Professional;
- 10.1.2 the Authority may require the Supplier to remove a Professional whose performance the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing the Professional;
- 10.1.3 the Authority shall not unreasonably delay or withhold Approval for the appointment of a replacement for the Professional by the Supplier, but the Authority may interview the candidates to replace the Professional before one of them is appointed; and
- 10.1.4 the Supplier acknowledges that the Professional is essential to the proper provision of the Services. The Supplier shall ensure that the Professional is not absent for more than 10 Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Professional whom he or she has replaced.

## **11. SUPPLIER'S STAFF**

### **11.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:**

#### **11.1.1 the Supplier;**

#### **11.1.2 any member of the Staff; or**

#### **11.1.3 any person employed or engaged by any member of the Staff**

Schedule 7 whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- 11.2 At the Authority's request, the Supplier shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 11.3 If the Supplier fails to comply with clause 11.2 within 2 Months of the date of the request then the Authority may exclude Supplier Staff from entry to the Premises. Exercise of the Authority's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.
- 11.4 The Supplier's staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.5 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all its staff employed or engaged by the Supplier at the Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

## **12. ENVIRONMENTAL REQUIREMENTS**

Schedule 8 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone

depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

### **13. HEALTH AND SAFETY**

- 13.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 13.2 While on the Premises, the Supplier shall comply with any health and safety measures in respect of Staff and other persons working there.
- 13.3 The Supplier shall notify the Authority immediately if there is any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other person in the performance of its obligations under the Contract.
- 13.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

### **14. PRICE**

- 14.1 In consideration of the Supplier's performance of its obligations under the Contract, the Authority shall pay the Price.
- 14.2 The Authority shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

### **15. PAYMENT AND VAT**

- 15.1 The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Authority to substantiate the invoice.
- 15.2 Where the Supplier submits an invoice to the Authority in accordance with clause 15.1, the Authority will consider and verify that invoice within 7 days.
- 15.3 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed. The Authority will comply with PPN 03/16: to pay 90% of undisputed and valid invoices from SMEs within 5 days and 100% of all undisputed and valid invoices to be paid within 30 days.
- 15.4 Where the Authority fails to comply with clause 15.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Authority.
- 15.5 The Supplier shall add VAT to the Price at the prevailing rate as applicable.
- 15.6 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 15.7 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date on which the tax or other liability is payable by the Authority.

### **16. RECOVERY OF SUMS DUE**

- 16.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract following a court determination), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority.

- 16.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 16.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 16.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 16.5 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under clause 38.7 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## **17. CONFLICTS OF INTEREST**

- 17.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Authority under the provisions of the Contract.
- 17.2 The Supplier shall promptly notify the Authority (and provide full particulars to the Authority) if any conflict referred to in clause 17.1 arises or is reasonably foreseeable.
- 17.3 The Authority may terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **18. DISCRIMINATION**

- 18.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 18.2 The Supplier shall take all reasonable steps to secure the observance of clause 18 by all servants, employees or agents of the Supplier and all suppliers employed in the execution of the Contract.

## **19. CONFIDENTIALITY**

- 19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 19.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
  - 19.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 19.2 Clause 19 shall not apply to the extent that:
- 19.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 22 (Freedom of Information);



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

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

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

19.2.5 it is independently developed without access to the other party's Confidential Information.

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

19.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

19.5 The Supplier shall ensure that their employees, servants or such professional advisors or consultants are aware of the Supplier's obligations under this Contract.

19.6 Nothing in this Contract shall prevent the Authority from disclosing the Supplier's Confidential Information:

19.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

19.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

19.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

19.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

19.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or

19.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.

19.7 The Authority shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 19.6 is made aware of the Authority's obligations of confidentiality.

19.8 Nothing in this clause 19 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

19.9 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

19.10 Subject to Clause 19.9, the Supplier hereby gives its consent for the Authority to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

19.11 The Authority may consult with the Supplier to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

19.12 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

## **20. OFFICIAL SECRETS ACTS 1911 TO 1989**

20.1 The Supplier shall comply with, and shall ensure that its staff comply with, the provisions of:

20.1.1 the Official Secrets Acts 1911 to 1989; and

20.1.2 section 182 of the Finance Act 1989.

20.2 If the Supplier or its staff fail to comply with this clause, the Authority may terminate the Contract by giving notice in writing to the Supplier.

## **21. DATA PROTECTION**

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, each Party acts as an independent Controller of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control) as set out in Schedule 1 (Processing Personal Data). The provisions of this clause shall be read subject to the provisions of Schedule 1. In the event that either Party at any time acts as a Processor in respect of Personal Data under the Contract of which the other Party is a Controller:

21.1.1 the Parties shall promptly implement additional provisions that are necessary to comply with GDPR Article 28 based substantially on the terms set out in the Crown Commercial Services Procurement Policy Note 02/18 as revised from time to time and duly record those provisions in Schedule 1 pursuant to the provisions governing variations in clause 30 without any change to the Price;

21.1.2 notwithstanding such additional provisions, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with the following provisions of this clause.

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

21.3 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

21.4 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.1, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

21.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of the Contract.

21.6 The Parties shall only provide Personal Data to each other:

- (a) to the extent necessary to perform the respective obligations under the Contract;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
- (c) where it has recorded it in Schedule 1 (Processing Personal Data).

21.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

- 21.8 A Party processing Personal Data for the purposes of the Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 21.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract ("the Request Recipient"):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 21.10 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 21.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Schedule 1 (Processing Personal Data).
- 21.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under the Contract which is specified in Schedule 1 (Processing Personal Data).

## **22. FREEDOM OF INFORMATION**

- 22.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall:
- 22.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
  - 22.1.2 transfer to the Authority all requests for information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 22.1.3 provide the Authority with a copy of all Information belonging to the Authority requested which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
  - 22.1.4 not respond directly to a request for information unless authorised in writing to do so by the Authority.
- 22.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIR to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier

of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **23. PUBLICITY**

- 23.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval.
- 23.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation on the Authority, including any examination of the Contract by the Auditor.
- 23.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

## **24. INTELLECTUAL PROPERTY RIGHTS**

- 24.1 All Intellectual Property Rights in materials shall:
  - 24.1.1 if they are furnished to or made available to the Supplier by or on behalf of the Authority (**Authority IP Materials**) remain the property of the Authority (save for Copyright and Database Rights which shall remain the property of the Crown); and
  - 24.1.2 if they are prepared by or for the Supplier on behalf of the Authority in connection with the Contract (**Service IP Materials**) or the performance of the Contract vest in the Authority (save for Copyright and Database Rights which shall vest in the Crown) (together the **IP Materials**).
- 24.2 The Supplier shall not, and shall ensure that Staff shall not, use or disclose IP Materials without Approval save to the extent necessary for the performance by the Supplier of its obligations under the Contract.
- 24.3 Subject to the remaining provisions of this clause, including the licence provided for in clause 24.5, the Supplier hereby assigns to the Authority or undertakes to procure the assignment to the Authority of all Intellectual Property Rights which may subsist in the Service IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service IP Materials and shall include, without limitation, an assignment to the Authority (or the Crown as appropriate) of all Intellectual Property Rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Supplier shall execute all documents and do all other acts requested by the Authority and necessary to execute and perfect these assignments and otherwise to evidence the Authority's or the Crown's ownership of such rights.
- 24.4 The Supplier shall:
  - 24.4.1 waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright prepared by or in connection with the Contract or the performance of the Contract.
  - 24.4.2 ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those Intellectual Property Rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in those Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to another provider. The Supplier

shall notify the Authority of any third party Intellectual Property Rights to be used in connection with the performance of the Services or otherwise in connection with the Contract (including, for the avoidance of doubt, the creation or development of the Service IP Materials) prior to such use.

- 24.5 The Authority hereby grants to the Supplier for the duration of the Contract Period a non-exclusive, royalty-free, non-transferable (but subject to the right to grant sub-licences to its subcontractors) licence to use the IP Materials to the extent necessary for performing the Services in accordance with this Contract. The Supplier shall not, and shall procure that its subcontractors (whether direct or indirect) do not, use any IP Materials for any purpose other than the performance of the Services or otherwise in connection with the Contract or for the benefit of any person other than the Authority.
- 24.6 The Supplier shall not infringe any Intellectual Property Rights of any third party in performing the Services or any of its other obligations under the Contract .
- 24.7 Subject to the proviso in clause 24.8, the Supplier shall at all times, during and after the Contract Period, on written demand indemnify the Authority (or, as the case may be, the Crown) and keep the Authority (or, as the case may be, the Crown) indemnified from and against all claims, losses, damages, costs, expenses and other liabilities (including legal fees) which the Authority may suffer or incur as a result of or in connection with any IPR Claim, except to the extent that any such IPR Claim arises from:
- 24.7.1 Authority IP Materials; or
- 24.7.2 the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.
- 24.8 It is a condition of the application of clause 24.7 that the Authority:
- 24.8.1 notifies the Supplier in writing of the relevant IPR Claim;
- 24.8.2 allows the Supplier to conduct all negotiations and proceedings in accordance with the principles set out in clause 24.9 and at appropriate times provides the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- 24.8.3 does not, without first consulting with the Supplier, make any admission relating to the IPR Claim.
- 24.9 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.
- 24.10 The Supplier shall not settle or compromise the IPR Claim without the Authority's express prior written Approval (not to be unreasonably withheld or delayed).
- 24.11 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- 24.11.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- 24.11.2 replace or modify the relevant item with non-infringing substitutes provided that:
- a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- b) there is no additional cost to the Authority; and
- c) the terms of the Agreement shall apply to the replaced or modified Services.
- 24.12 In this clause:
- 24.12.1 **IPR Claim** means any claim of infringement or alleged infringement of any Intellectual Property Right used to provide the Services or as otherwise provided by or on behalf of the Supplier to the Authority in connection with the Contract (however and

wherever arising and whether or not it has been or is required to be assigned to the Authority or the Crown in accordance with this clause;

- 24.12.2 to the extent that this clause provides for Copyrights and Database Rights to be assigned to the Crown the Crown shall in relation thereto be deemed to enjoy the same rights as the Authority enjoys under this clause in relation to all other Intellectual Property Rights subject always to similar provisos and obligations and the Authority hereby confirms that it is duly authorised to act for and on behalf of the Crown in relation to any IPR Claim arising out of or in connection with the use by the Crown of any such Copyrights or Database Rights.

## **25 RECORDS AND AUDIT ACCESS**

- 25.4 The Supplier shall keep and maintain until 6 years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.
- 25.5 The Supplier shall keep the records and accounts referred to in clause 25.1 in accordance with good accountancy practice.
- 25.6 The Supplier shall on request afford the Authority, the Authority's representatives and/or the Auditor such access to such records and accounts as may be required by the Authority from time to time.
- 25.7 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Authority and the Auditor.
- 25.8 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.
- Subject to the Supplier's rights of confidentiality, the Supplier shall provide access at all reasonable times to the Authority's internal auditors or other duly authorised staff or agents to inspect such documents as the Authority considers necessary in connection with this Contract and where appropriate speak to the Supplier's employees.
- 25.9 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## **26 REPLACEMENT OF CORRUPTED DATA**

Schedule 9 If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

## **27 REMEDIES FOR INADEQUATE PERFORMANCE**

- 27.4 If the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Authority may:
- 27.4.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;

- 27.4.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- 27.4.3 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 27.5 Without prejudice to clause 8.3.5, if the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days of the Authority's instructions or such other period of time as the Authority may direct.
- 27.6 If the Supplier:
- 27.6.1 fails to comply with clause 27.2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- 27.6.2 persistently fails to comply with clause 27.2

## **28 TRANSFER AND SUB-CONTRACTING**

- 28.4 The Supplier shall not assign or novate or in any other way dispose of the Contract or any part of it without Approval.
- 28.5 The Supplier may subcontract elements of the contract. However, oversight and overall project responsibility for the delivery of this contract including KPIs, budget, quality, risk reporting and contractual arrangements will lie with the lead supplier.
- 28.6 Provided that it has Approval, the Supplier may novate the Contract if:
- 28.6.1 the specific change in supplier was provided for in the procurement process for the award of the Contract;
- 28.6.2 there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of the Contract.
- 28.7 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 28.7.1 any Contracting Authority;
- 28.7.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Authority; or
- 28.7.3 any private sector body which substantially performs the functions of the Authority
- Schedule 10 provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

## **29 WAIVER**

- 29.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 29.5 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **30 VARIATION**

- 30.4 Subject to the provisions of this clause 30, the Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order (**Variation**).
- 30.5 The Authority may request a Variation by completing and sending the Variation form attached at Annexe A (**Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 30.6 If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Price, the Authority may:
- 30.6.1 agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- 30.6.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 30.7 If the Parties agree the Variation and any variation in the Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

### **31 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 31.4 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

### **32 SEVERANCE**

- 32.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 32.5 If one Party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **33 LIABILITY, INDEMNITY AND INSURANCE**

- 33.4 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 33.4.1 death or personal injury caused by its negligence;
- 33.4.2 fraud or fraudulent misrepresentation;
- 33.4.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 33.4.4 any claim under clause 15.6;
- 33.4.5 any claim under clause 35; or
- 33.4.6 any claim under the indemnity in clause 24.7.
- 33.5 Subject to clauses 33.6 and 33.4, the Supplier shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply,



or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any of its staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

- 33.6 Subject to clauses 33.4 and 33.4, the liability of either Party for Defaults shall be subject to the following financial limits:
- 33.6.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall not exceed £1,000,000 (one million pounds); and
- 33.6.2 the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of £100,000 (one hundred thousand pounds).
- 33.7 Subject to clause 33.4, neither Party is liable to the other for any:
- 33.7.1 loss of profits;
- 33.7.2 loss of business;
- 33.7.3 loss of revenue;
- 33.7.4 loss of or damage to goodwill;
- 33.7.5 loss of savings (whether anticipated or otherwise); or
- 33.7.6 any indirect or consequential loss or damage.
- 33.8 The Authority may, among other things, recover as a direct loss:
- 33.8.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
- 33.8.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and
- 33.8.3 the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.
- 33.9 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

#### **34 INSURANCES**

- 34.4 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (**Required Insurance**).
- 34.5 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 34.6 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurance is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 34.7 If the Supplier fails to give effect to and maintain the Required Insurance, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 34.8 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 34.9 The Supplier shall hold and maintain the Required Insurance for a minimum of 6 years following the expiry or earlier termination of the Contract.

### **35 TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

- 35.4 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the staff (or any of them) as an employer of the staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the staff whether during the Contract Period or arising from termination or expiry of the Contract.
- 35.5 The Supplier warrants, represents and undertakes that it is VAT registered (if appropriate) and that it complies and will continue to comply with all necessary tax legislation, regulations and requirements, including, without limitation:
- 35.5.1 if the Supplier is liable to be taxed in the United Kingdom in respect of receipt of the Price, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of receipt of the Price; and
- 35.5.2 if the Supplier is liable to National Insurance Contributions in respect of receipt of the Price, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to National Insurance Contributions in respect of receipt of the Price.
- 35.6 The Supplier shall, at the Authority's request, provide the Authority with all assurances, information and documentation (including, without limitation, annual accounts and tax certificates) in relation to tax and financial standing, including, without limitation, information which demonstrates how the Supplier complies with clause 35.2 or why clause 35.2 does not apply to it.
- 35.7 A request under clause 35.3 may specify the information which the Supplier must provide and the period within which that information must be provided.

### **36 WARRANTIES AND REPRESENTATIONS**

Schedule 11 36.1 The Supplier warrants and represents that:

- 36.4.1 it has full capacity and Authority and all necessary consents to enter into and perform its obligations under the Contract;
- 36.4.2 the Contract is executed by a duly authorised representative of the Supplier or, if the Supplier is an individual, by the Supplier;
- 36.4.3 in entering the Contract it has not committed any Prohibited Act;
- 36.4.4 as at the Commencement Date, all information, statements and representations contained in the Supplier's application to join the DPS and the Tender are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 36.4.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened

against it or its assets which will or might affect its ability to perform its obligations under the Contract;

- 36.4.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 36.4.7 no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier, for its bankruptcy, for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 36.4.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- 36.4.9 the Services shall be provided and carried out by appropriately experienced, qualified and trained staff with all due skill, care and diligence.

### **37 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

- 37.4 Without affecting any other right or remedy available to it, the Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if:
  - 37.4.1 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or has any partner to whom any of the foregoing apply;
  - 37.4.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 37.4.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 37.4.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
  - 37.4.5 the holder of a qualifying floating charge over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
  - 37.4.6 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
  - 37.4.7 the Supplier is the subject of a bankruptcy petition or order;
  - 37.4.8 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
  - 37.4.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 37.4.1 to clause 37.1.8 (inclusive); or
  - 37.4.10 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 37.5 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of**

**Control**). The Authority may terminate the Contract by notice in writing with immediate effect within 6 Months of:

37.5.1 being notified that a Change of Control has occurred; or

37.5.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control

Schedule 12 but shall not be permitted to terminate where Approval was granted before the Change of Control.

### **38 TERMINATION ON DEFAULT**

38.4 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:

38.4.1 the Supplier has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

38.4.2 the material breach is not, in the opinion of the Authority, capable of remedy.

38.5 For the purposes of clause 38.4, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

38.5.1 a substantial portion of the Contract; or

38.5.2 any of the obligations set out in clauses 10, 20, 21 and 36.

Schedule 13 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

38.6 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if:

38.6.1 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

38.6.2 if any of the provisions of regulation 73(1) of the Regulations apply; or

38.6.3 any warranty given by the Supplier in clause 36 is found to be untrue or misleading.

38.7 The Supplier may terminate this Contract only if the Authority is in material breach of its obligation to pay the Price by giving the Authority 90 days written notice specifying the breach and requiring its remedy. The Supplier's right of termination under this clause 38.7 shall not apply to non-payment of the Price by the Authority where such non-payment is due to the Authority exercising its rights under clause 16 (Recovery of Sums Due).

### **39 TERMINATION FOR CONVENIENCE**

39.1 The Authority may terminate the Contract at any time by giving one Month's written notice to the Supplier.

#### **39.2 Termination payment**

39.2.1 Subject to the provisions of this clause below, if the Authority terminates this Contract pursuant to clause 39.1, the Authority shall pay the Supplier an amount equal to the Supplier's Unrecovered Costs.

#### **39.3 Mitigation of Unrecovered Costs**

39.3.1 The Supplier agrees to take all reasonable steps to minimise and mitigate the Unrecovered Costs by:

- a) the appropriation of assets, employees and resources for other purposes. If such assets, employees and resources can be used for other purposes then there shall

be an equitable reduction in the Unrecovered Costs payable by the Authority to the Supplier; and

- b) in relation to contracts entered into with third parties, termination by the Supplier of those contracts at the earliest possible date without breach or where contractually permitted, and, where required by the Authority, assigning such contracts to the Authority or a third party acting on behalf of the Authority.

**39.4 Invoicing for the payments on termination**

All sums due under this clause shall be payable by the Authority to the Supplier in accordance with the payment terms set out in clause 1 **Error! Reference source not found.** (*Payment and VAT*).

**39.5 Set off**

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

**39.6 No double recovery**

The value of any payments due under this clause shall be reduced or extinguished to the extent that the Supplier has already received the Price or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

**40 CONSEQUENCES OF TERMINATION OR EXPIRY**

- 40.1 Where the Authority terminates the Contract under clause 38 and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 39, no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

- 40.2 Except as otherwise expressly provided in the Contract:

- 40.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 40.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 1, 2, 19 to 23, 25, 26, 31 to 36, 40, 42, 45 and 46.

**41 DISRUPTION**

- 41.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other supplier employed by the Authority.
- 41.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 41.3 If there is industrial action by its staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 41.4 If the Supplier's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may:
  - 41.4.1 require the Supplier to provide alternative proposals; or

41.4.2 undertake the services itself and recover from the Supplier the additional costs incurred in the process.

41.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **42 RECOVERY ON TERMINATION**

42.1 On the termination of the Contract for any reason, the Supplier shall:

42.1.1 immediately return to the Authority all the of the Authority's Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted Suppliers, which was obtained or produced in the course of providing the Services;

42.1.2 immediately deliver to the Authority all Property in good working order;

42.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and

42.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Supplier to conduct due diligence.

42.2 If the Supplier fails to comply with this clause 42, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers where any such items may be held.

42.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance reasonably required by the Authority free of charge.

42.4 On the termination of the Contract for any reason, the Authority shall immediately return to the Supplier any of the Supplier's Confidential Information, Personal Data and Supplier's Background IPR in its possession obtained or produced in the course of the Services

## **43 DISPUTE RESOLUTION**

43.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) the Parties shall follow the procedure set out in this clause 43.

43.2 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authority and the Supplier shall attempt in good faith to resolve the Dispute;

43.3 if the Authority and Supplier are for any reason unable to resolve the Dispute within 60 days of service of the Dispute Notice the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

43.4 Neither Party may commence any court or arbitration proceedings under clause 43 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

43.5 If the Dispute is not resolved within 60 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60

days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 43.

#### **44 FORCE MAJEURE**

Schedule 14 44.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from and event of Force Majeure. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 60 days, the Party not affected may terminate the Contract by giving 20 days' written notice to the affected Party.

#### **45 NOTICES**

- 45.5 Except as otherwise expressly provided within the Contract, no notice from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the notice.
- 45.6 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party in the manner referred to in clause 45.3. Provided the relevant communication is not returned as undelivered, the notice shall be deemed to have been given 2 Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt of such letter.
- 45.7 For the purposes of clause 45.2 the address of each Party shall be as set out in the Order Form or as notified to the other Party.

#### **46 GOVERNING LAW AND JURISDICTION**

- 46.5 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 46.6 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## Annex A

### Variation Form

#### Call-off terms and conditions for services

[NAME OF LOT]

.....

**No of Order Form being varied:**.....

**Variation Form No:**.....

#### **BETWEEN:**

[xxxxx] (the **Authority**)

and

[NAME OF SUPPLIER] (the **Supplier**)

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE PRICE].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

#### **Authorised to sign for and on behalf of the Authority**

Signature.....

Date.....

Name in capitals.....

Address.....

#### **Authorised to sign for and on behalf of the Supplier**

Signature.....

Date.....

Name in capitals.....

Address.....



## Schedule 1

### Processing Personal Data

The Parties acknowledge that for the purposes of the Data Protection Legislation, each Party acts as an independent Controller of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control).

1. The contact details of the Authority’s Data Protection Officer are:  
Emma Wharram  
Sanctuary Buildings  
Great Smith Street  
London  
[Emma.wharram@education.gov.uk](mailto:Emma.wharram@education.gov.uk)
2. The contact details of the Supplier’s Data Protection Officer are:  
Richard Preece  
9th Floor, 10 Exchange Square, Primrose Street, London, EC2A 2BR  
[richard.preece@lgfl.net](mailto:richard.preece@lgfl.net)
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	Parties are independent controllers.
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A

Type of Personal Data	N/A
Categories of Data Subject	N/A
Plan for return and destruction of the data  once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	N/A