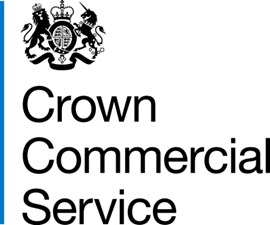
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**Joint Schedules**

Framework Ref: RM6238 Supply Teachers and Temporary Staff in Educational Establishments

**Joint Schedule 1 (Definitions)**

* 1. In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
  2. If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
  3. In each Contract, unless the context otherwise requires:
     1. the singular includes the plural and vice versa;
     2. reference to a gender includes the other gender and the neuter;
     3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
     4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
     5. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
     6. references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
     7. references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings"** as references to obligations under the Contract;
     8. references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
     9. references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
     10. references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
     11. the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;
     12. where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;
     13. any reference in a Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
         1. 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 shall be read on and after Exit 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; and
         2. any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and
     14. unless otherwise provided, references to “**Buyer**” shall be construed as including Exempt Buyers; and
     15. unless otherwise provided, references to “**Call-Off Contract**” and “**Contract**” shall be construed as including Exempt Call-off Contracts.
  4. In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

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| **“Accounting Reference Date”** | means in each year the date to which the Supplier prepares its annual audited financial statements; |
| **"Accreditation Body"** | an organisation or trade body which has been approved by CCS and the Department for Education to provide assurance that Suppliers to this Framework Contract have all the relevant measures and processes in place to adhere to the pre-employment check and safeguarding requirements of this Framework Contract as per Framework Schedule 1 Specification; |
| **"Achieve"** | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "**Achieved**", "**Achieving**" and "**Achievement**" shall be construed accordingly; |
| **"Additional Insurances"** | insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements); |
| **"Admin Fee”** | means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees; |
| **"Affected Party"** | the Party seeking to claim relief in respect of a Force Majeure Event; |
| **"Affiliates"** | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **“Agency Selection Tool”** | means the tool which contains all Supplier branch/office details and enables Buyers to reduce the number of framework Suppliers on Lot 1 to those with a branch/office within close proximity to the school using post code data. Schools will be responsible for setting the distance in which the Supplier must have a branch/office. The Agency Selection Tool will list these Suppliers with the lowest Supplier Fee ranked first to support the Direct Award procedure; |
| **“Agency Worker Regulations”** | or AWR means the regulations that protect Workers by granting them the same rights as employees; |
| **“Annex”** | extra information which supports a Schedule; |
| **"Approval"** | the prior written consent of the Buyer and "**Approve**" and "**Approved**" shall be construed accordingly; |
| **"Assignment"** | a placement of a Worker by a Supplier to provide their Services to a Buyer; |
| **"Audit"** | the Relevant Authority’s right to:   1. verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract); 2. verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services; 3. verify the Open Book Data; 4. verify the Supplier’s and each Subcontractor’s compliance with the Contract and applicable Law; 5. identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations; 6. identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables; 7. obtain such information as is necessary to fulfil the Relevant Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; 8. review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract; 9. carry out the Relevant Authority’s internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts; 10. 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 Relevant Authority has used its resources; or 11. verify the accuracy and completeness of any Management Information delivered or required by the Framework Contract; |
| **"Auditor"** | 1. the Relevant Authority’s internal and external auditors; 2. the Relevant Authority’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and 6. successors or assigns of any of the above; |
| **"Authority"** | CCS and each Buyer; |
| **"Authority Cause"** | any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier; |
| **"BACS"** | the Bankers’ Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom; |
| **"Beneficiary"** | a Party having (or claiming to have) the benefit of an indemnity under this Contract; |
| **"Buyer"** | the relevant public sector purchaser identified as such in the Order Form; |
| **"Buyer Assets"** | the Buyer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract; |
| **"Buyer Authorised Representative"** | the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form; |
| **"Buyer Premises"** | premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them); |
| **"Call-Off Contract"** | the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form; |
| **"Call-Off Contract Period"** | the Contract Period in respect of the Call-Off Contract; |
| **"Call-Off Expiry Date"** | the scheduled date of the end of a Call-Off Contract as stated in the Order Form; |
| **"Call-Off Incorporated Terms"** | the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form; |
| **"Call-Off Initial Period"** | the Initial Period of a Call-Off Contract specified in the Order Form; |
| **"Call-Off Optional Extension Period"** | such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form; |
| **"Call-Off Procedure"** | the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure); |
| **"Call-Off Special Terms"** | any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract; |
| **"Call-Off Start Date"** | the date of start of a Call-Off Contract as stated in the Order Form; |
| **"Call-Off Tender"** | the tender submitted by the Supplier in response to the Buyer’s Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender); |
| **"CCS"** | the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP; |
| **"CCS Authorised Representative"** | the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form; |
| **"Central Government Body"** | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   * 1. Government Department;   2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);   3. Non-Ministerial Department; or   4. Executive Agency; |
| **"Change in Law"** | any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date; |
| **"Change of Control"** | a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| **"Charges"** | the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions; |
| **"Claim"** | any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract; |
| **“College”** | means further education colleges and sixth-form colleges as established under the Further and Higher Education Act 1992 and institutions designated as being within the further education sector; |
| **"Commercially Sensitive Information"** | the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; |
| **"Comparable Supply"** | the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables; |
| **"Compliance Officer"** | the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations; |
| **"Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as **"confidential"**) or which ought reasonably to be considered to be confidential; |
| **"Conflict of Interest"** | a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS; |
| **"Continuing Professional Development" or “CPD”** | CPD is the term used to describe the learning activities Workers undertake to develop and enhance their abilities; |
| **"Contract"** | either the Framework Contract or the Call-Off Contract, as the context requires; |
| **"Contract Period"** | the term of either a Framework Contract or Call-Off Contract on and from the earlier of the:  a) applicable Start Date; or  b) the Effective Date  up to and including the applicable End Date; |
| **"Contract Value"** | the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier; |
| **"Contract Year"** | a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof; |
| **"Control"** | control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **“Controller”** | has the meaning given to it in the UK GDPR; |
| **“Core Terms”** | CCS’ terms and conditions for common goods and services which govern how Suppliers must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts; |
| **“COSoP”** | Cabinet Office Statement of Practice; |
| **"Costs"** | the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:   * 1. the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:      1. base salary paid to the Supplier Staff;      2. employer’s National Insurance contributions;      3. pension contributions;      4. car allowances;      5. any other contractual employment benefits;      6. staff training;      7. work place accommodation;      8. work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and      9. reasonable recruitment costs, as agreed with the Buyer;   2. costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;   3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and   4. Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;   but excluding:   * 1. Overhead;   2. financing or similar costs;   3. maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;   4. taxation;   5. fines and penalties;   6. amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and   7. non-cash items (including depreciation, amortisation, impairments and movements in provisions); |
| **“Credit Rating Threshold”** | has the meaning given to it in the Framework Award Form or Order Form, as the context requires; |
| **"CRTPA"** | the Contract Rights of Third Parties Act 1999; |
| **“Customer Service Function”** | the provision by the Supplier of personnel to support and assist Buyers, Workers or Subcontractors when delivering the service; |
| **“Data Protection Impact Assessment”** | an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data; |
| **"Data Protection Legislation"** | (i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy; |
| **“Data Protection Liability Cap”** | the amount specified in the Framework Award Form; |
| **"Data Protection Officer"** | has the meaning given to it in the UK GDPR; |
| **"Data Subject"** | has the meaning given to it in the UK GDPR; |
| **"Data Subject Access Request"** | 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; |
| **“DBS”** | Disclosure and Barring Service; |
| **"Deductions"** | all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract; |
| **"Default"** | any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority; |
| **"Default Management Charge"** | has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information); |
| **"Delay Payments"** | the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan; |
| **"Deliverables"** | Goods and/or Services that may be ordered under the Contract including the Documentation; |
| **"Delivery"** | delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "**Deliver**" and "**Delivered**" shall be construed accordingly; |
| **"Disclosing Party"** | the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential); |
| **"Dispute"** | any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts; |
| **"Dispute Resolution Procedure"** | the dispute resolution procedure set out in Clause 34 (Resolving disputes); |
| **"Documentation"** | descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:   * 1. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables   2. is required by the Supplier in order to provide the Deliverables; and/or   3. has been or shall be generated for the purpose of providing the Deliverables; |
| **"DOTAS"** | the Disclosure of Tax Avoidance Schemes rules which require a promoter of Tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions; |
| **“DPA 2018”** | the Data Protection Act 2018; |
| **"Due Diligence Information"** | any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date; |

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| **"Education Support Staff "** | any Workers providing specialised or instructional support; |

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| **“Effective Date”** | the date on which the final Party has signed the Contract; |
| **"EIR"** | the Environmental Information Regulations 2004; |
| **“Electronic Invoice”** | an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870; |

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| **"Employment Agency"** | means in accordance with The Conduct of Employment Agencies and Employment Businesses Regulations, an organisation that introduces Work-Seekers for direct engagement, on a fixed term basis, by Buyers. This is often referred to as permanent recruitment or employment even though the Assignment may only be for a fixed period; |
| **"Employment Business"** | means in accordance with The Conduct of Employment Agencies and Employment Businesses Regulations, an Employment Business engages Temporary Work-Seekers and supplies those Temporary Work-Seekers to the Buyer for hire on Assignments where they will be under the Buyer's direct supervision or control; |

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| **"Employment Regulations"** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC; |
| **"End Date"** | the earlier of:   * 1. the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2); or   2. if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract; |
| **"Environmental Policy"** | 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, including any written environmental policy of the Buyer; |
| **"Equality and Human Rights Commission"** | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time; |
| **“Estimated Year 1 Charges”** | the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form; |

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| **"Estimated Yearly Charges"** | means for the purposes of calculating each Party’s annual liability under clause 11.2 :  i)  in the first Contract Year, the Estimated Year 1 Charges; or  ii) in the any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or      iii) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period; |
| **“Exempt Buyer”** | a public sector purchaser that is eligible to use the Framework Contract and is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of:   * 1. the Regulations;   2. the Concession Contracts Regulations 2016 (SI 2016/273);   3. the Utilities Contracts Regulations 2016 (SI 2016/274);   4. the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);   5. the Remedies Directive (2007/66/EC);   6. Directive 2014/23/EU of the European Parliament and Council;   7. Directive 2014/24/EU of the European Parliament and Council;   8. Directive 2014/25/EU of the European Parliament and Council; or   9. Directive 2009/81/EC of the European Parliament and Council; |
| **“Exempt Call-Off Contract”** | the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract; |
| **“Exempt Procurement Amendments”** | any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by and in accordance with any legal requirements applicable to that Exempt Buyer; |

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| **"Existing IPR"** | any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise); |
| **“Exit Day”** | shall have the meaning in the European Union (Withdrawal) Act 2018; |
| **"Expiry Date"** | the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates); |

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| **"Extended Hire Period"** | means the period of time in which a Worker can move to a Buyer permanently without a Temp to Perm Transfer Fee being payable; |

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| **"Extension Period"** | the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates; |
| **"Fixed Term"** | means a Worker who is provided by an Employment Agency to the Buyer for an Assignment that will terminate when a specific term expires; |
| **“Financial Reports”** | a report by the Supplier to the Buyer that:   * 1. provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;   2. provides a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);   3. is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of the Contract; and   4. is certified by the Supplier’s Chief Financial Officer or Director of Finance; |
| **"FOIA"** | 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 Event"** | any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including:   * 1. riots, civil commotion, war or armed conflict;   2. acts of terrorism;   3. acts of government, local government or regulatory bodies;   4. fire, flood, storm or earthquake or other natural disaster,   but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain; |
| **"Force Majeure Notice"** | a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |
| **"Framework Award Form"** | the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS; |
| **"Framework Contract"** | the framework agreement established between CCS and the Supplier in accordance with Regulation 33 by the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the notice published on the Find a Tender Service; |
| **"Framework Contract Period"** | the period from the Framework Start Date until the End Date of the Framework Contract; |
| **"Framework Expiry Date"** | the scheduled date of the end of the Framework Contract as stated in the Framework Award Form; |
| **"Framework Incorporated Terms"** | the contractual terms applicable to the Framework Contract specified in the Framework Award Form; |
| **"Framework Optional Extension Period"** | such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form; |
| **"Framework Price(s)"** | the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices); |
| **"Framework Special Terms"** | any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract; |
| **"Framework Start Date"** | the date of start of the Framework Contract as stated in the Framework Award Form; |
| **"Framework Tender Response"** | the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender); |
| **"Further Competition Procedure"** | the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure); |
| **"General Anti-Abuse Rule"** | * 1. the legislation in Part 5 of the Finance Act 2013 and; and   2. any future legislation introduced into parliament to counteract Tax advantages arising from abusive arrangements to avoid National Insurance contributions; |
| **"General Change in Law"** | a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; |
| **“Gold Contract”** | a Call-Off Contract categorised as a Gold contract using the Cabinet Office Contract Tiering Tool; |
| **"Goods"** | goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form; |
| **"Good Industry Practice"** | standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| **"Government"** | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **"Government Data"** | 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 Authority’s Confidential Information, and which:   * + 1. are supplied to the Supplier by or on behalf of the Authority; or     2. the Supplier is required to generate, process, store or transmit pursuant to a Contract; |
| **"Guarantor"** | the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract; |
| **"Halifax Abuse Principle"** | the principle explained in the CJEU Case C-255/02 Halifax and others; |
| **“HM Government”** | Her Majesty's Government; |
| **"HMRC"** | Her Majesty’s Revenue and Customs; |
| **"ICT Policy"** | the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure; |
| **"Impact Assessment"** | an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:   * 1. details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;   2. details of the cost of implementing the proposed Variation;   3. details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;   4. a timetable for the implementation, together with any proposals for the testing of the Variation; and   5. such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request; |
| **"Implementation Plan"** | the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer; |
| **"Indemnifier"** | a Party from whom an indemnity is sought under this Contract; |
| **“Independent Control”** | where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and “**Independent Controller**” shall be construed accordingly; |
| **"Indexation"** | the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form; |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| **"Information Commissioner"** | 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; |
| **"Initial Period"** | the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires; |
| **"Insolvency Event"** | with respect to any person, means:  (a) that person 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:  (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or  (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;  (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;  (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;  (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within 14 days;  (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;  (f) where that person is a company, a LLP or a partnership:  (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;  (ii) 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 filed at Court or given or if an administrator is appointed, over that person;  (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or  (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or  (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; |
| **"Installation Works"** | all works which the Supplier is to carry out at the beginning of the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract; |
| **"Intellectual Property Rights" or "IPR"** | * 1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;   2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and   3. all other rights having equivalent or similar effect in any country or jurisdiction; |
| **"Invoicing Address"** | the address to which the Supplier shall invoice the Buyer as specified in the Order Form; |
| **"IPR Claim"** | any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract; |
| **"IR35"** | the off-payroll rules requiring individuals who work through their company pay the same income tax and National Insurance contributions as an employee which can be found online at: <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>; |
| **“ISO”** | International Organization for Standardization; |
| **“Joint Controller Agreement”** | the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 (*Processing Data*); |
| **“Joint Controllers”** | where two or more Controllers jointly determine the purposes and means of Processing; |
| **Key Information Document"** | is the information that an Employment Business must provide the Worker in accordance with regulation 13A of The Conduct of Employment Agencies and Employment Businesses Regulations; |
| **"Key Staff"** | the individuals (if any) identified as such in the Order Form; |
| **"Key Sub-Contract"** | each Sub-Contract with a Key Subcontractor; |
| **"Key Subcontractor"** | any Subcontractor:   * 1. which is relied upon to deliver any work package within the Deliverables in their entirety; and/or   2. which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or   3. with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract,   and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form; |
| **"Know-How"** | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party’s possession before the applicable Start Date; |
| **"Law"** | any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply; |
| **"Losses"** | all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "**Loss**" shall be interpreted accordingly; |
| **"Lots"** | the number of lots specified in Framework Schedule 1 (Specification), if applicable; |

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| **"Managed Service"** | is when a Supplier takes responsibility for all of the Buyer’s sourcing, engagement, administration and management of temporary staffing requirements; |

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| **"Management Charge"** | the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information); |
| **"Management Information" or “MI”** | the management information specified in Framework Schedule 5 (Management Charges and Information); |

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| **"Master Vendor"** | is when a Supplier, acting as a Managed Service, takes responsibility for delivering the Services using Workers from their own resource pool, but may also be supported by Subcontractors; |

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| **“MI Default”** | means whentwo (2) MI Reports are not provided in any rolling six (6) month period |
| **"MI Failure"** | means when an MI report:   * 1. contains any material errors or material omissions or a missing mandatory field; or   2. is submitted using an incorrect MI reporting Template; or   3. is not submitted by the reporting date (including where a declaration of no business should have been filed); |
| **"MI Report"** | means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information); |
| **"MI Reporting Template"** | means the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority; |
| **"Milestone"** | an event or task described in the Implementation Plan; |
| **"Milestone Date"** | the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved; |
| **"Month"** | a calendar month and "**Monthly**" shall be interpreted accordingly; |
| **"National Insurance"** | 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); |
| **"Neutral Vendor"** | is when a Supplier, acting as a Managed Service, takes responsibility for delivering the Services using Workers only from Subcontractors; |
| **"New IPR"** | * 1. IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or   2. IPR in or arising as a result of the performance of the Supplier’s obligations under a Contract and all updates and amendments to the same;   but shall not include the Supplier’s Existing IPR; |

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| **"Nominated Worker"** | means a Worker introduced to the Supplier by the Buyer or a Worker that has registered on the Buyer’s talent pool database; |

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| **"Notice Period"** | means the period of notice given by the Buyer in order to take a Worker on permanently, and potentially reduce or remove the cost of a Temp to Perm Transfer Fee; |
| **"Occasion of Tax Non–Compliance"** | where:   * 1. any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:      1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;      2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or   2. any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for Tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion; |
| **"Open Book Data "** | complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:   * 1. the Supplier’s Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;   2. operating expenditure relating to the provision of the Deliverables including an analysis showing:      1. the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;      2. staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;      3. a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and      4. Reimbursable Expenses, if allowed under the Order Form;   3. Overheads;   4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;   5. the Supplier Profit achieved over the Framework Contract Period and on an annual basis;   6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;   7. an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and   8. the actual Costs profile for each Service Period; |
| **"Order"** | means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract; |
| **"Order Form"** | a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract; |
| **"Order Form Template"** | the template in Framework Schedule 6 (Order Form Template and Call-Off Schedules); |
| **"Other Contracting Authority"** | any actual or potential Buyer under the Framework Contract; |
| **"Overhead"** | those amounts which are intended to recover a proportion of the Supplier’s or the Key Subcontractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs"; |
| **"Parliament"** | takes its natural meaning as interpreted by Law; |
| **"Party"** | in the context of the Framework Contract, CCS or the Supplier, and in the in the context of a Call-Off Contract the Buyer or the Supplier. "**Parties**" shall mean both of them where the context permits; |
| **"Performance Indicators" or "PIs"** | the performance measurements and targets in respect of the Supplier’s performance of the Framework Contract set out in Framework Schedule 4 (Framework Management); |
| **"Personal Data"** | has the meaning given to it in the UK GDPR; |
| **“Personal Data Breach”** | has the meaning given to it in the UK GDPR; |
| **“Personnel”** | all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract; |
| **"Prescribed Person"** | 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: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>; |
| **“Processing”** | has the meaning given to it in the UK GDPR; |
| **“Processor”** | has the meaning given to it in the UK GDPR; |
| **"Progress Meeting"** | a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative; |
| **"Progress Meeting Frequency"** | the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form; |
| **“Progress Report”** | a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates; |
| **“Progress Report Frequency”** | the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form; |
| **“Prohibited Acts”** | * 1. to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:      1. induce that person to perform improperly a relevant function or activity; or      2. reward that person for improper performance of a relevant function or activity;   2. 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 each Contract; or   3. committing any offence:      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or      2. under legislation or common law concerning fraudulent acts; or      3. defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or   4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; |
| **“Protective Measures”** | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract; |
| **“Rating Agency”** | as defined in the Framework Award Form or the Order Form, as the context requires; |
| **“Recall”** | a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance; |
| **"Recipient Party"** | the Party which receives or obtains directly or indirectly Confidential Information; |
| **"Rectification Plan"** | the Supplier’s plan (or revised plan) to rectify it’s breach using the template in Joint Schedule 10 (Rectification Plan) which shall include:   * 1. full details of the Default that has occurred, including a root cause analysis;   2. the actual or anticipated effect of the Default; and   3. the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable); |
| **"Rectification Plan Process"** | the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process); |
| **"Regulations"** | the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires); |
| **"Reimbursable Expenses"** | the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:   * 1. travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and   2. subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; |
| **"Relevant Authority"** | the Authority which is party to the Contract to which a right or obligation is owed, as the context requires; |
| **"Relevant Authority's Confidential Information"** | * 1. all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);   2. any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority’s attention or into the Relevant Authority’s possession in connection with a Contract; and   information derived from any of the above; |
| **"Relevant Requirements"** | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010; |
| **"Relevant Tax Authority"** | HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established; |
| **"Reminder Notice"** | a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time; |
| **"Replacement Deliverables"** | any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party; |
| **"Replacement Subcontractor"** | a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor); |
| **"Replacement Supplier"** | any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer; |
| **"Request For Information"** | a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs; |
| **"Required Insurances"** | the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form; |
| **“RTI”** | Real Time Information; |
| **"Satisfaction Certificate"** | the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test; |

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| **"Schools"** | can include but not limited to primary and secondary schools, colleges, academies, trusts, free schools, independent schools, special schools, community schools, foundation schools, voluntary aided, voluntary controlled, all-through schools alternative provision, pupil referral units, children centres, nurseries, and further education institutions; |

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| **"Security Management Plan"** | the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable); |
| **"Security Policy"** | the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier; |
| **"Self Audit Certificate"** | means the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate); |
| **"Serious Fraud Office"** | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time; |
| **“Service Levels”** | any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule); |
| **"Service Period"** | has the meaning given to it in the Order Form; |
| **"Services"** | services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form; |
| **"Service Transfer"** | any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor; |
| **"Service Transfer Date"** | the date of a Service Transfer; |
| **"Sites"** | any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:   * 1. the Deliverables are (or are to be) provided; or   2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; |
| **"SME"** | an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises; |
| **"Special Terms"** | any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract; |
| **"Specific Change in Law"** | a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date; |
| **"Specification"** | the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form; |
| **"Standards"** | any:   * 1. standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (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;   2. standards detailed in the specification in Schedule 1 (Specification);   3. standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time;   4. relevant Government codes of practice and guidance applicable from time to time; |
| **"Start Date"** | in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form; |
| **"Statement of Requirements"** | a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure; |

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| **"Status Determination Statement (SDS)"** | means the written conclusion of the Contracting Authority’s assessment of the Worker undertaken pursuant to the Off-Payroll Legislation; |

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| **"Storage Media"** | the part of any device that is capable of storing and retrieving data; |
| **"Sub-Contract"** | any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party:   * 1. provides the Deliverables (or any part of them);   2. provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or   3. is responsible for the management, direction or control of the provision of the Deliverables (or any part of them); |
| **"Subcontractor"** | any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person; |
| **“Subject Access Request”** | a written request to a company or organisation asking for access to the personal information it holds on you; |
| **"Subprocessor"** | any third Party appointed to process Personal Data on behalf of that Processor related to a Contract; |
| **"Supplier"** | the person, firm or company identified in the Framework Award Form; |
| **"Supplier Assets"** | all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets; |
| **"Supplier Authorised Representative"** | the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract; |
| **"Supplier's Confidential Information"** | * 1. any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;   2. any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with a Contract;   3. Information derived from any of (a) and (b) above; |
| **"Supplier's Contract Manager”** | the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment; |
| **"Supplier Equipment"** | the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Call-Off Contract; |

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| **"Supplier Fee"** | the fee the Supplier will charge that shall cover all associated costs with the provision of the Services in accordance with Framework Schedule 1 (Specification), overheads, CCS Management Charge and Supplier Profit; |

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| **"Supplier Marketing Contact"** | shall be the person identified in the Framework Award Form; |
| **"Supplier Non-Performance"** | where the Supplier has failed to:   * 1. Achieve a Milestone by its Milestone Date;   2. provide the Goods and/or Services in accordance with the Service Levels ; and/or   3. comply with an obligation under a Contract; |

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| **"Supplier Personnel"** | any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees)  <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees> applies in respect of the Deliverables; |

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| **"Supplier Profit"** | in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period; |
| **"Supplier Profit Margin"** | in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; |
| **"Supplier Staff"** | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under a Contract; |
| **“Supply Teacher"** | means a person who teaches at a School, college or other educational establishment when the regular teacher is unavailable due to illness, personal leave or other reasons, including covering vacancies or for new roles. A Supply Teacher may be required to cover short-term temporary bookings or long-term Assignments; |
| **"Supporting Documentation"** | sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable; |
| **“Tax”** | 1. all forms of taxation whether direct or indirect; 2. national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; 3. all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions. levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and 4. any penalty, fine, surcharge, interest, charges or costs relating to any of the above,   in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction; |

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| **"Temp to Perm"** | when a Worker moves from a Supplier to the Buyer; |
| **"Temporary Work-Seeker"** | a Worker provided and paid by an Employment Business, usually charged on an hourly or daily basis; |

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| **"Termination Notice"** | a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination; |
| **"Test Issue"** | any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract; |
| **"Test Plan"** | a plan:   * 1. for the Testing of the Deliverables; and   2. setting out other agreed criteria related to the achievement of Milestones; |
| **"Tests "** | any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and "**Tested**" and “**Testing**” shall be construed accordingly; |
| **"Third Party IPR"** | Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables; |

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| **"Transfer Fee"** | A fee that may be charged if a Buyer takes a Worker permanently from the Supplier without giving the appropriate Temp to Perm Notice Period or appropriate Assignment length for a Fixed Term Worker; |

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| **"Transferring Supplier Employees"** | those employees of the Supplier and/or the Supplier’s Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date; |
| **"Transparency Information"** | the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –  (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and  (ii) Commercially Sensitive Information; |
| **"Transparency Reports"** | the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports); |
| **“TUPE”** | Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive |
| **"UK GDPR"** | the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679); |
| **“United Kingdom”** | the country that consists of England, Scotland, Wales, and Northern Ireland |
| **"Umbrella Company"** | a company that employs a Temporary Work-seeker on behalf of an Employment Business. The Employment Business will then provide the Services of the Worker to the Buyer; |
| **"Variation"** | any change to a Contract; |
| **"Variation Form"** | the form set out in Joint Schedule 2 (Variation Form); |
| **"Variation Procedure"** | the procedure set out in Clause 24 (Changing the contract); |
| **"VAT"** | value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"VCSE"** | a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; |
| **"Work Day"** | 7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and |
| **"Work Hours"** | the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks. |

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| **"Work-Seeker"** | a Worker provided by an Employment Agency for a Fixed Term Assignment, paid by the Buyer; |
| **"Worker"** | means a Temporary Work-Seeker or a Work-Seeker; |

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| **"Working Day"** | any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form; |

**Joint Schedule 2 (Variation Form)**

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

|  |  |  |
| --- | --- | --- |
| **Contract Details** | | |
| This variation is between: | **[delete** as applicable:CCS / Buyer**]** ("**CCS”  “the Buyer"**)  And  **[insert** name of Supplier**]** (**"the Supplier"**) | |
| Contract name: | **[insert** name of contract to be changed] **(“the Contract”)** | |
| Contract reference number: | **[insert** contract reference number] | |
| **Details of Proposed Variation** | | |
| Variation initiated by: | **[delete** as applicable: CCS/Buyer/Supplier] | |
| Variation number: | **[insert** variation number] | |
| Date variation is raised: | **[insert** date] | |
| Proposed variation |  | |
| Reason for the variation: | **[insert** reason] | |
| An Impact Assessment shall be provided within: | **[insert** number] days | |
| **Impact of Variation** | | |
| Likely impact of the proposed variation: | **[Supplier to insert** assessment of impact] | |
| **Outcome of Variation** | | |
| Contract variation: | This Contract detailed above is varied as follows:   * **[CCS/Buyer to insert** original Clauses or Paragraphs to be varied and the changed clause] | |
| Financial variation: | Original Contract Value: | £ **[insert** amount] |
| Additional cost due to variation: | £ **[insert** amount] |
| New Contract value: | £ **[insert** amount] |

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete** as applicable:CCS / Buyer**]**
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.

Signed by an authorised signatory for and on behalf of the **[delete** as applicable:CCS / Buyer**]**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |

**Joint Schedule 3 (Insurance Requirements)**

1. **The insurance you need to have**
   1. The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the “**Insurances**”).  The Supplier shall ensure that each of the Insurances is effective no later than:
      1. the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
      2. the Call-Off Contract Effective Date in respect of the Additional Insurances.
   2. The Insurances shall be:
      1. maintained in accordance with Good Industry Practice;
      2. (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
      3. taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
      4. maintained for at least six (6) years after the End Date.
   3. The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.
2. **How to manage the insurance**
   1. Without limiting the other provisions of this Contract, the Supplier shall:
      1. take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
      2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
      3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
3. **What happens if you aren’t insured**
   1. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
   2. Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
4. **Evidence of insurance you must provide**
   1. The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.
5. **Making sure you are insured to the required amount**
   1. The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.
6. **Cancelled Insurance**
   1. The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
   2. The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part.  The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
7. **Insurance claims**
   1. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances.  In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
   2. Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
   3. Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
   4. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible.  The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

**ANNEX: REQUIRED INSURANCES**

1. The Supplier shall hold the following insurance cover from the Framework Start Date in accordance with this Schedule:
   1. professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
   2. public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000); and
   3. employers’ liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

**Joint Schedule 4 (Commercially Sensitive Information)**

1. **What is the Commercially Sensitive Information?**
   1. In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
   2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
   3. Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
|  | [insert date] | [insert details] | [insert duration] |

**Joint Schedule 5 (Corporate Social Responsibility)**

1. **What we expect from our Suppliers**
   1. In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. (<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf>)
   2. CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
   3. The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility.  The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.
2. **Equality and Accessibility**
   1. In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
      1. eliminate discrimination, harassment or victimisation of any kind; and
      2. advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.
3. **Modern Slavery, Child Labour and Inhumane Treatment**

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

1. The Supplier:
   1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
   2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
   3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
   4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
   5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
   6. shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
   7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
   8. shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
   9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
   10. shall not use or allow child or slave labour to be used by its Subcontractors;
   11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.
2. **Income Security**
   1. The Supplier shall:
      1. ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
      2. ensure that all Supplier Staff  are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
      3. not make deductions from wages:
         1. as a disciplinary measure
         2. except where permitted by law; or
         3. without expressed permission of the worker concerned;
      4. record all disciplinary measures taken against Supplier Staff; and
      5. ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.
3. **Working Hours**
   1. The Supplier shall:
      1. ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
      2. that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
      3. ensure that use of overtime is used responsibly, taking into account:
4. the extent;
5. frequency; and
6. hours worked;

by individuals and by the Supplier Staff as a whole;

1. The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
2. Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
   1. this is allowed by national law;
   2. this is allowed by a collective agreement freely negotiated with a workers’ organisation representing a significant portion of the workforce;

appropriate safeguards are taken to protect the workers’ health and safety; and

1. the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
2. All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

1. **Sustainability**
2. The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

**Joint Schedule 6 (Key Subcontractors)**

1. **Restrictions on certain subcontractors**
   1. The Supplier is entitled to sub-contract its obligations under the Framework Contract to the Key Subcontractors set out in the Framework Award Form.
   2. The Supplier is entitled to sub-contract its obligations under a Call-Off Contract to Key Subcontractors listed in the Framework Award Form who are specifically nominated in the Order Form.
   3. Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of CCS and the Buyer and the Supplier shall, at the time of requesting such consent, provide CCS and the Buyer with the information detailed in Paragraph 1.4.  The decision of CCS and the Buyer to consent or not will not be unreasonably withheld or delayed.  Where CCS consents to the appointment of a new Key Subcontractor then they will be added to section 18 of the Framework Award Form.  Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to the Key Subcontractor section of the Order Form.  CCS and the Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
      1. the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
      2. the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
      3. the proposed Key Subcontractor employs unfit persons.
   4. The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:
      1. the proposed Key Subcontractor’s name, registered office and company registration number;
      2. the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
      3. where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the CCS and the Buyer that the proposed Key Sub-Contract has been agreed on "arm’s-length" terms;
      4. for CCS, the Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Contract Period;
      5. for the Buyer, the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Call Off Contract Period; and
      6. (where applicable) Credit Rating Threshold (as defined in Joint Schedule 7 (Financial Difficulties) of the Key Subcontractor.
   5. If requested by CCS and/or the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.4, the Supplier shall also provide:
      1. a copy of the proposed Key Sub-Contract; and
      2. any further information reasonably requested by CCS and/or the Buyer.
   6. The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
      1. provisions which will enable the Supplier to discharge its obligations under the Contracts;
      2. a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;
      3. a provision enabling CCS and the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
      4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;
      5. obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Framework Contract in respect of:
         1. the data protection requirements set out in Clause 14 (Data protection);
         2. the FOIA and other access request requirements set out in Clause 16 (When you can share information);
         3. the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or the Buyer into disrepute;
         4. the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
         5. the conduct of audits set out in Clause 6 (Record keeping and reporting);
      6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Clauses 10.4 (When CCS or the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
      7. a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of CCS and the Buyer.

**Joint Schedule 7 (Financial Difficulties)**

1. **Definitions**

1.1 In this Schedule, the following definitions shall apply:

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| --- | --- |
| **“Applicable Financial Indicators”** | means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule; |
| **“Board”** | means the Supplier’s board of directors; |
| **“Board Confirmation”** | Means written confirmation from the board in accordance with Paragraph 8 of this schedule; |
| **“Bronze contract”** | Call-Off Contract categorised as a Bronze contract using the Cabinet Office Contract Tiering Tool; |
| **“Cabinet office Markets and Suppliers Team”** | means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function; |
| **“Credit rating Threshold”** | The minimum credit rating level for each entity in the FDE Group as set out in Annex 1 to this Schedule; |
| **“DE Group”** | means the [Supplier, Key Sub-contractors, [the Guarantor] and the [Monitored Suppliers]]; |
| **“Financial distress event”** | Any of the events listed in Paragraph 3.1 of this Schedule; |
| **“Financial Distress Remediation Plan"** | A Plan set out how the supplier will ensure the continued support and delivery of the deliverables in accordance with the contract in the event that a financial distress event occurs; |
| **“Financial Indicators”** | Respect of the supplier, Key sub-contractor and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this schedule and in respect of each monitored supplier, means those Applicable Financial Indicators; |
| **“Financial Target Thresholds”** | Means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule; |
| **“Monitored Suppliers”** | Means those entities specified at paragraph 5.2 of this Schedule; |
| **“Rating Agencies”** | The rating agencies listed in Annex 1 of this Schedule; |
| **“Strategic supplier”** | those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers> |

1. **Warranties and duty to notify**
   1. The Supplier warrants and represents to the Relevant Authority for the benefit of the Relevant Authority that as at the Effective Date:
      1. the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 to this Schedule; and
      2. the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
   2. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Relevant Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
   3. The Supplier shall:
      1. regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
      2. monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within ninety (90) days after the Accounting Reference Date; and
      3. promptly notify (or shall procure that its auditors promptly notify) the Relevant Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
   4. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1, and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated that entity at or below the applicable Credit Rating Threshold.
   5. Each report submitted by the Supplier pursuant to paragraph 2.3.2 shall:
      1. be a single report with separate sections for each of the FDE Group entities;
      2. contain a sufficient level of information to enable the Relevant Authority to verify the calculations that have been made in respect of the Financial Indicators;
      3. include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
      4. be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
      5. include a history of the Financial Indicators reported by the Supplier in graph form to enable the Relevant Authority to easily analyse and assess the trends in financial performance.
2. **Financial Distress events**
   1. The following shall be Financial Distress Events:
      1. the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
      2. an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
      3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
      4. an FDE Group entity committing a material breach of covenant to its lenders;
      5. a Key Sub-contractor notifying CCS or the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
      6. any of the following:
         1. commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
         2. non-payment by an FDE Group entity of any financial indebtedness;
         3. any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
         4. the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
         5. the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Relevant Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Deliverables in accordance with the Contract; and

1. any [one] of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.
2. **Consequences** of Financial Distress Events
   1. Immediately upon notification by the Supplier of a Financial Distress Event (or if the Relevant Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Relevant Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
   2. In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Relevant Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
      1. rectify such late or non-payment; or
      2. demonstrate to the Relevant Authority’s reasonable satisfaction that there is a valid reason for late or non-payment.
   3. The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
      1. at the request of the Relevant Authority, meet the Relevant Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Relevant Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with the Contract; and
      2. where the Relevant Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1 that the Financial Distress Event could impact on the continued performance and delivery of the Deliverables in accordance with the Contract:
         1. submit to the Relevant Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Relevant Authority may permit and notify to the Supplier in writing); and
         2. to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Buyer may reasonably require in order to understand the risk to the Deliverables, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
   4. The Relevant Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Relevant Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Relevant Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Relevant Authority or referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms under Paragraph 4.5.
   5. If the Relevant Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier’s obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure in Clause 34 of the Core Terms.
   6. Following approval of the Financial Distress Remediation Plan by the Relevant Authority, the Supplier shall:
      1. on a regular basis (which shall not be less than fortnightly):
         1. review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Relevant Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Deliverables in accordance with this Contract; and
         2. provide a written report to the Relevant Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
      2. where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6.1, submit an updated Financial Distress Remediation Plan to the Relevant Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
      3. comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
   7. Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Relevant Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
   8. The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3.2(b) is available when required and on request from the Relevant Authority and within reasonable timescales. Such measures may include:
      1. obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Buyer and/or entering into confidentiality agreements which permit disclosure;
      2. agreeing in advance with the Relevant Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Relevant Authority;
      3. putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Relevant Authority (which may include making price sensitive information available to the Relevant Authority’s nominated personnel through confidential arrangements, subject to their consent); and
      4. disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.
3. **Financial Indicators**
   1. Subject to the calculation methodology set out at Annex 3 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Financial Indicator** | **Calculation1** | **Financial Target Threshold:** | **Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 2.3.2(b)]** |
| **1**  **[Operating Margin]**  **OR**  **[The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods]** | *[Operating Margin = Operating Profit / Revenue]* | *[> [X%]]* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]* |
| **2**  **[Free Cash Flow to Net Debt Ratio]**  **OR**  **[Net Debt to EBITDA Ratio]** | *[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]*  *OR*  *[Net Debt to EBITDA ratio = Net Debt / EBITDA]* | *[> [X%]]*  *OR*  *[< [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12 months ending on, and Net Debt at, the relevant [accounting reference date / half year end]* |
| **3**  **[Net Debt + Net Pension Deficit to EBITDA ratio]** | *[Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA]* | *[< [X]] times* | *Tested and reported yearly in arrears within 90 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date* |
| **4**  **[Net Interest Paid Cover]** | *[Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]* | *[> [X]] times* | *Tested and reported [yearly in arrears within [120] days of each [accounting reference date] based upon figures for the 12 months ending on the relevant [accounting reference date]* |
| **5**  **[Acid Ratio]** | *[Acid Ratio = (Current Assets – Inventories) / Current Liabilities]* | *[> [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| **6**  **[Net Asset value]** | *[Net Asset Value = Net Assets]* | *[> £0]* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| **7**  **[Group Exposure Ratio]** | *[Group Exposure / Gross Assets]* | *[< [X]]%* | *Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date* |
| **8**    **[Turnover Ratio]** | [Turnover/Annual Contract Value] | *[x]* | Turnover is taken from the Income Statement in a standard set of financial statements, this figure is to only include Turnover from 'continuing operations'. Annual Contract Value is calculated from the highest value Lot the bidder has applied for on the FVRA |

Key: 1 – see Annex 3 to this Schedule which sets out the calculation methodology to be used in the calculation of each financial indicator.

1. Monitored Suppliers

|  |  |
| --- | --- |
| **Monitored Supplier** | Applicable Financial Indicators  (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers) |
| [Entity 1 Group Member, Sub-contractor, Relevant Parent Company etc.] | [1 – Operating Margin]  [2 – etc..]  [3][4][5][6][7][8][etc..] |
| [Entity 2 e.g Group Member, Sub-contractor, Relevant Parent Company etc.] | [1 – Operating Margin]  [2 – etc.]  [3][4][5][6][7][8][etc..] |
| [etc.] | [etc.] |

1. **Termination rights**
   1. The Relevant Authority shall be entitled to terminate the Contract if:
      1. the Supplier fails to notify the Relevant Authority of a Financial Distress Event in accordance with Paragraph 2.3.3;
      2. the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
      3. the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6.3,

which shall be deemed to be an event to which Clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply accordingly.

1. **Primacy of Credit Ratings**
   1. Without prejudice to the Supplier’s obligations and the Relevant Authority’s rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1.7, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 to this Schedule, then:
      1. the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
      2. the Relevant Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).
2. **Board confirmation**
   1. If the Contract has been specified as a Critical Service Contract under Paragraph 1.1 of Part B of Annex 1 to Call-Off Schedule 8 (Business Continuity and Disaster Recovery) (if applicable) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within ninety (90) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Relevant Authority in the form set out at Annex 4 to this Schedule, confirming that to the best of the Board’s knowledge and belief, it is not aware of and has no knowledge:
      1. that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
      2. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
   2. The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Staff and other persons as is reasonably necessary to understand and confirm the position.
   3. In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
   4. Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Buyer (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.
3. **Optional Clauses**
   1. Where a Buyer’s Call-Off Contract is a Bronze Contract, if specified in the Order Form, the terms at Annex 5 shall apply to the Call-Off Contract in place of the foregoing terms of this Joint Schedule 7.

**Annex 1: Rating Agencies and their standard Rating System**

[Rating Agency 1]

[Rating Agency 2]

**Annex 2: Credit Ratings and Credit Rating Thresholds**

|  |  |
| --- | --- |
| **Entity** | **Credit rating (long term)** |
| Supplier |  |
| [Guarantor] |  |
| [Key Subcontractor] |  |

**Annex 3: Calculation methodology for Financial Indicators**

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

**General methodology**

1. ***Terminology***: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. ***Groups***: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. ***Foreign currency conversion***: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. ***Treatment of non-underlying items***: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

**Specific Methodology**

|  |  |
| --- | --- |
| **Financial Indicator** | Specific Methodology |
| **1**  **[Operating Margin]** | [The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.  Figures for Operating Profit and Revenue should exclude the entity’s share of the results of any joint ventures or Associates.  Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.] |
| **2**  **[Free Cash Flow to Net Debt Ratio]**    **OR**  **[Net Debt to EBITDA Ratio]** | *[“****Free Cash Flow****” = Net Cash Flow from Operating Activities – Capital Expenditure*  *“****Capital Expenditure****” = Purchase of property, plant & equipment + purchase of intangible assets*  *“****Net Debt****” = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents*  The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements.  *Net Cash Flow from Operating Activities*: This should be stated after deduction of interest and tax paid.  *Capital expenditure*: The elements of capital expenditure may be described slightly differently but will be found under ‘Cash flows from investing activities’ in the Statement of Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.  *Net Debt*: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect  of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.]  OR  *[“****Net Debt****” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents*  *“****EBITDA****” = Operating profit + Depreciation charge + Amortisation charge*  The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.  *Net Debt*: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.  *EBITDA*: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates. *The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).]* |
| **3**  **[Net Debt + Net  Pension Deficit to EBITDA ratio]** | *[“****Net Debt****” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents*  *“****Net Pension Deficit****” = Retirement Benefit Obligations – Retirement Benefit Assets*  *“****EBITDA****” = Operating profit + Depreciation charge + Amortisation charge*  The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.  *Net Debt*: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but *not* non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  *Net Pension Deficit*: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms.  Where ‘Net Debt + Net Pension Deficit’ is negative, the relevant Financial Target Threshold should be treated as having been met.  *EBITDA*: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates.  The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.  Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless ‘Net Debt + Net Pension Deficit’ is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).] |
| **4**  **[Net Interest Paid Cover]** | *[“****Earnings Before Interest and Tax****” = Operating profit*  *“****Net Interest Paid****” = Interest paid – Interest received*  Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates.  Interest received and interest paid should be shown on the face of the Cash Flow statement.  Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.] |
| **5**  **[Acid Ratio]** | [All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.] |
| **6**  **[Net Asset value]** | [Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or ‘Shareholders’ Funds’. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).] |
| **7**  **[Group Exposure Ratio]** | *[“****Group Exposure****” = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings*  *“****Gross Assets****” = Fixed Assets + Current Assets*  *Group Exposure*:  Balances owed by (ie receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.  Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met.  In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.  *Gross Assets*: Both Fixed assets and Current assets are shown on the face of the Balance Sheet] |

**Annex 4: Board Confirmation**

**Supplier Name:**

**Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at paragraph 8 of Joint Schedule 7 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Staff and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

1. that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
2. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair …………………………………

Signed …………………………………

Date …………………………………

Director …………………………………

Signed …………………………………

Date …………………………………

**ANNEX 5: OPTIONAL CLAUSES FOR BRONZE CONTRACTS**

1. **Definitions**
   1. In this Annex 5, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Credit Rating Threshold"** | 1. the minimum credit rating level for the Monitored Company as set out in Appendix 2; |
| **"Financial Distress Event"** | 1. the occurrence or one or more of the following events:    1. the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;    2. the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;    3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;    4. Monitored Company committing a material breach of covenant to its lenders;    5. a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or    6. any of the following:       1. commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;       2. non-payment by the Monitored Company of any financial indebtedness;       3. any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or       4. the cancellation or suspension of any financial indebtedness in respect of the Monitored Company 2. in each case which the Relevant Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Call-Off Contract; |
| **"Financial Distress Service Continuity Plan"** | 1. a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with [each Call-Off] Contract in the event that a Financial Distress Event occurs; |
| **“Monitored Company”** | 1. Supplier [the Guarantor] or any Key Subcontractor] |
| **"Rating Agencies"** | 1. the rating agencies listed in Appendix 1. |

1. **When this Schedule applies**
   1. The Parties shall comply with the provisions of this Annex 5 in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
   2. The terms of this Annex 5 shall survive:
      1. under the Framework Contract until the later of (a) the termination or expiry of the Framework Contract or (b) the latest date of termination or expiry of any call-off contract entered into under the Framework Contract (which might be after the date of termination or expiry of the Framework Contract); and
      2. under the Call-Off Contract until the termination or expiry of the Call-Off Contract.

1. **What happens when your credit rating changes**
   1. The Supplier warrants and represents to the Relevant Authority that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Appendix 2.
   2. The Supplier shall promptly (and in any event within five (5) Working Days) notify the Relevant Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
   3. If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company’s auditors thereafter provide the Relevant Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Relevant Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by the Relevant Authority.  For these purposes the "quick ratio" on any date means:

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where:

|  |  |
| --- | --- |
| A | is the value at the relevant date of all cash in hand and at the bank of the Monitored Company]; |
| B | is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Monitored]; and |
| D | is the value at the relevant date of the current liabilities of the Monitored Company]. |

1. The Supplier shall:
   1. regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
   2. promptly notify (or shall procure that its auditors promptly notify) the Relevant Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
2. For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.
3. **What happens if there is a financial distress event**
   1. In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Relevant Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Relevant Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6 of this Annex 5.
   2. [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Relevant Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Relevant Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:
      1. rectify such late or non-payment; or
      2. demonstrate to the Relevant Authority's reasonable satisfaction that there is a valid reason for late or non-payment.]
   3. The Supplier shall and shall procure that the other Monitored Companies shall:
      1. at the request of the Relevant Authority meet the Relevant Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and
      2. where the Relevant Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:
         1. submit to the Relevant Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
         2. provide such financial information relating to the Monitored Company as the Relevant Authority may reasonably require.
   4. If the Relevant Authority does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Relevant Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Relevant Authority or referred to the Dispute Resolution Procedure.
   5. If the Relevant Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
   6. Following Approval of the Financial Distress Service Continuity Plan by the Relevant Authority, the Supplier shall:
      1. on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;
      2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
      3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
   7. Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Relevant Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.
   8. CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.
4. **When CCS or the Buyer can terminate for financial distress**
   1. CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:
      1. the Supplier fails to notify the Relevant Authority of a Financial Distress Event in accordance with Paragraph 3.4;
      2. The Relevant Authority and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
      3. the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.
   2. If the Contract is terminated in accordance with Paragraph 5.1, Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Contract had been terminated under Clause 10.4.1.
5. **What happens If your credit rating is still good**
   1. Without prejudice to the Supplier’s obligations and CCS’ and the Buyer’s rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
      1. the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
      2. The Relevant Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

**Appendix 1: RATING AGENCIES**

[Rating Agency 1]

[Rating Agency 2]

**Appendix 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

**Part 1: Current Rating**

|  |  |
| --- | --- |
| **Entity** | **Credit rating (long term)** |
| Supplier | [D&B Threshold] |
| [Guarantor] |  |
| [Key Subcontractor] |  |  |

**D&B minimum thresholds - Applicable to Bronze Contracts**

|  |  |
| --- | --- |
| **Lot** | **Minimum D&B Rating** |
| Lot 1 | 35 |
| Lot 2.1 | 50 |
| Lot 4 | 50 |  |

**Joint Schedule 8 (Guarantee)**

**[Guidance Note: Where the financial evaluation has indicated the need for a Deed of Guarantee, include this Schedule in the contract.]**

# Definitions

## **In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):**

|  |  |
| --- | --- |
| **"Guarantee"** | a deed of guarantee from the Guarantor in favour of a Buyer in the form set out in Annex 1 to this Schedule; |
| **"Guarantor"** | the person that the Supplier relied upon to meet the economic and financial standing requirements of the selection stage of the procurement process for the Framework Contract; and |
| **“Letter of Intent to Guarantee”** | the letter from the Guarantor to CCS to confirm that the Guarantor will enter into each Guarantee in the form set out in Annex 2 to this Schedule. |

# Obligation to Provide Guarantee

## **Where CCS has notified the Supplier that the award of the Framework Contract is conditional upon the availability of a Guarantee for each Call-Off Contract:**

## **as a condition for the award of the Framework Contract, the Supplier must have delivered to CCS within 30 days of a request by CCS:**

### an executed Letter of Intent to Guarantee from the Guarantor; and

### a certified copy extract of the board minutes and/or resolution of the Guarantor approving the intention to enter into a Letter of Intent to Guarantee in accordance with the provisions of this Schedule; and

## **on demand from a Buyer, the Supplier must procure a Guarantee in accordance with Paragraph 2.4 below.**

## **If the Supplier fails to deliver any of the documents required by Paragraph 2.1.1 above within 30 days of request then:**

## **CCS may terminate this Framework Contract; and**

## **each Buyer may terminate any or all of its Call-Off Contracts,**

## **in each case as a material Default of the Contract for the purposes of Clause 10.4.1(d) of the Core Terms.**

## **Where the CCS has received a Letter of Intent to Guarantee from the Guarantor pursuant to Paragraph 2.1.1, CCS may terminate this Framework Contract as a material Default of the Contract for the purposes of Clause 10.4.1(d) of the Core Terms where:**

### the Guarantor withdraws or revokes the Letter of Intent to Guarantee in whole or in part for any reason whatsoever;

### the Letter of Intent to Guarantee becomes invalid or unenforceable for any reason whatsoever;

### the Guarantor refuses to enter into a Guarantee in accordance with Paragraph 2.1.2 above; or

### an Insolvency Event occurs in respect of the Guarantor,

### and in each case the Letter of Intent to Guarantee is not replaced by an alternative commitment to make resources available acceptable to CCS.

## **Where a Buyer has notified the Supplier that the award of the Call-Off Contract by the Buyer shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of the Call-Off Contract, as a condition precedent of that Call-Off Contract, the Supplier shall deliver to the Buyer by the date so specified by the Buyer:**

### an executed Guarantee; and

### a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

## **Where a Buyer has procured a Guarantee under Paragraph 2.4 above, the Buyer may terminate the Call-Off Contract for as a material Default of the Contract for the purposes of Clause 10.4.1(d) of the Core Terms where:**

### the Guarantor withdraws the Guarantee in whole or in part for any reason whatsoever;

### the Guarantor is in breach or anticipatory breach of the Guarantee;

### an Insolvency Event occurs in respect of the Guarantor;

### the Guarantee becomes invalid or unenforceable for any reason whatsoever; or

### the Supplier fails to provide any of the documentation required by Paragraph 2.4 by the date so specified by the Buyer,

### and in each case the Guarantee is not replaced by an alternative guarantee agreement acceptable to the Buyer.

**Annex 1 – Form of Guarantee**

**[Guidance Note:** this is the draft form of guarantee to be used to procure a Guarantee, and so it will need to be amended to reflect the Beneficiary’s requirements.]

**DEED OF GUARANTEE**

**PROVIDED BY**

**[Insert** name of the Guarantor]

**FOR THE BENEFIT OF**

**[Insert** name of the Beneficiary**]**

**DEED OF GUARANTEE**

**THIS DEED OF GUARANTEE** is made the               day of                   20[  ]

**PROVIDED BY**:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of theGuarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details](**"Guarantor"**)

**WHEREAS**:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

(B) It is the intention of the Guarantor that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees for the benefit of the Beneficiary as follows:

# DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

## **unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;**

## **the words and phrases below shall have the following meanings:**

[**Guidance Note:** Insert and/or settle Definitions, including from the following list, for  the Guarantee]

|  |  |
| --- | --- |
| **"Beneficiary(s)"** | means [all Buyers under the Call-Off Contracts] [***insert name of the Buyer with whom the Supplier enters into a Call-Off Contract***] and "Beneficiaries" shall be construed accordingly; |
| **"Call-Off Contract"** | has the meaning given to it in the Framework Contract; |
| **“Framework Contract”** | means the framework contract RM6238 Supply Teachers and Temporary Staffing between the Minister for the Cabinet Office represented by its executive agency the Crown Commercial Service and the Supplier; |
| **"Guaranteed Agreement"** | means [each Call-Off Contract] [the Call-Off Contract] made between the Beneficiary and the Supplier [from time to time] [***on* insert date**]; |
| **"Guaranteed Obligations"** | means all obligations and liabilities of the Supplier to the Beneficiary under a Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to a Guaranteed Agreement; and |
| **“Supplier”** | means [**Insert** the name, address and registration number of the Supplier as each appears in the Framework Award Form]. |

## **references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to a Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;**

## **unless the context otherwise requires, words importing the singular are to include the plural and vice versa;**

## **references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;**

## **the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;**

## **unless the context otherwise requires, reference to a gender includes the other gender and the neuter;**

## **unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;**

## **unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;**

## **references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and**

## **references to liability are to include any liability whether actual, contingent, present or future.**

# GUARANTEE AND INDEMNITY

## **The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.**

## **The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.**

## **If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:**

### fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

### as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

## **As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.**

# OBLIGATION TO ENTER INTO A NEW CONTRACT

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

# DEMANDS AND NOTICES

## **Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:**

[**Insert** Address of the Guarantor in England and Wales]

**[Insert** Facsimile Number]

For the Attention of [**Insert** details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

## **Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:**

### if delivered by hand, at the time of delivery; or

### if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

### if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

## **In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.**

## **Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.**

# BENEFICIARY'S PROTECTIONS

## **The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.**

## **This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:**

### it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations  or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

### it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

### if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

### the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

## **The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.**

## **The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.**

## **The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.**

## **Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.**

## **Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.**

* 1. The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

# GUARANTOR INTENT

Without prejudice to the generality of Clause 5 (Beneficiary’s protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

# RIGHTS OF SUBROGATION

## **The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:**

### of subrogation and indemnity;

### to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier’s obligations; and

### to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand.  The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

# DEFERRAL OF RIGHTS

## **Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:**

### exercise any rights it may have to be indemnified by the Supplier;

### claim any contribution from any other guarantor of the Supplier’s obligations under the Guaranteed Agreement;

### take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

### demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

### claim any set-off or counterclaim against the Supplier;

## **If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.**

# REPRESENTATIONS AND WARRANTIES

## **The Guarantor hereby represents and warrants to the Beneficiary that:**

### the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

### the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

### the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:

### the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

### any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

### the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

### all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

### this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

### PAYMENTS AND SET-OFF

### All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

## **The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.**

## **The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.**

# GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

# ASSIGNMENT

## **The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.**

## **The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.**

# SEVERANCE

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

# THIRD PARTY RIGHTS

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee.  This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

# SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

# GOVERNING LAW

## **This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.**

## **The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.**

## **Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).**

## **The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.**

**[Guidance Note:** Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

## **[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]**

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

**Annex 2 – Form of Letter of Intent to Guarantee**

**[Guidance Note:** this is the form of the Letter of Intent to Guarantee to be used by a Guarantor to confirm that it will enter into a Guarantee for each Call Off Contract if required by a Buyer.]

**[ON THE LETTERHEAD OF THE GUARANTOR]**

Crown Commercial Service  
9th Floor, The Capital  
Old Hall Street  
Liverpool  
L3 9PP

[DATE]

Dear Sirs

**Letter of Intent to Guarantee – Framework Contract RM6238 Supply Teachers and Temporary Staff (the “Framework Contract”)**

**Name of Supplier: [INSERT NAME OF SUPPLIER]**

1. We refer to the Framework Contract. Unless otherwise defined in this Letter of Intent to Guarantee, capitalised terms used in this Letter of Intent to Guarantee have the meaning given to them in the Framework Contract.

1. We acknowledge that the Supplier relied on our capacity to meet the selection criteria relating to economic and financial standing that CCS set out in the procurement process for the Framework Contract.

1. We have issued this Letter of Intent to Guarantee in consideration of CCS entering into the Framework Contract with the Supplier.

1. Please accept this Letter of Intent to Guarantee as an undertaking from us and as proof that the Supplier will have at its disposal the resources necessary to achieve the economic and financial standing required in the relevant selection criteria.

1. We acknowledge that it is a condition of the Framework Contract that:

1. we provide this Letter of Intent to Guarantee to CCS (paragraph 2.1.1 of Joint Schedule 8 of the Framework Contract); and

1. on demand from a Buyer, the Supplier must procure that we enter into a Guarantee in the form set out in Annex 1 to Joint Schedule 8 of the Framework Contract (paragraph 2.1.2 of Joint Schedule 8 of the Framework Contract).

1. We confirm that:

1. we undertake to provide each Guarantee in accordance with the Framework Contract; and

1. we understand that CCS may terminate the Framework Contract with the Supplier as a material Default of the Framework Contract if:

1. we withdraw or revoke this Letter of Intent to Guarantee in whole or in part for any reason whatsoever;

1. we refuse to enter into a Guarantee in accordance paragraph 2.1.2 of Joint Schedule 8 of the Framework Contract; or

1. an Insolvency Event occurs in respect of the Guarantor.

1. Please find enclosed a certified copy of the extract of the board minutes and/or resolution of the Guarantor approving the intention to enter into a Letter of Intent to Guarantee in accordance with the provisions of Joint Schedule 8 of the Framework Contract.

1. This Letter of Intent to Guarantee and any Disputes arising out of, or connected to it, are governed by English law. CCS and the Guarantor must resolve any Dispute in accordance with Clause 34 of the Core Terms of the Framework Contract as if that clause applied to this Letter of Intent to Guarantee.

Yours faithfully

Name: …………………………

Job Title: ………………………

For and on behalf of

**[INSERT NAME OF THE GUARANTOR]**

Encs:

1. Certified copy of the extract of the board minutes and/or resolution of the Guarantor approving the intention to enter into a Letter of Intent to Guarantee

**Schedule 9**

(Not Used)

**Joint Schedule 10 (Rectification Plan)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Request for [Revised] Rectification Plan** | | | |
| Details of the Default: | [**Guidance:** Explain the Default, with clear schedule and clause references as appropriate] | | |
| Deadline for receiving the [Revised] Rectification Plan: | [**add** date (minimum 10 days from request)] | | |
| Signed by [CCS/Buyer] : |  | Date: |  |
| **Supplier [Revised] Rectification Plan** | | | |
| Cause of the Default | [**add** cause] | | |
| Anticipated impact assessment: | [**add** impact] | | |
| Actual effect of Default: | [**add** effect] | | |
| Steps to be taken to rectification: | **Steps** | **Timescale** | |
| 1. | [date] | |
| 2. | [date] | |
| 3. | [date] | |
| 4. | [date] | |
| […] | [date] | |
| Timescale for complete Rectification of Default | [X] Working Days | | |
| Steps taken to prevent recurrence of Default | **Steps** | **Timescale** | |
| 1. | [date] | |
| 2. | [date] | |
| 3. | [date] | |
| 4. | [date] | |
| […] | [date] | |
| Signed by the Supplier: |  | Date: |  |
| **Review of Rectification Plan** [CCS/Buyer] | | | |
| Outcome of review | [Plan Accepted] [Plan Rejected] [Revised Plan Requested] | | |
| Reasons for Rejection (if applicable) | [**add** reasons] | | |
| Signed by [CCS/Buyer] |  | Date: |  |

**Joint Schedule 11 (Processing Data)**

**Definitions**

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **“Processor Personnel”** | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract; |

**Status of the Controller**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
   1. “Controller” in respect of the other Party who is “Processor”;
   2. “Processor” in respect of the other Party who is “Controller”;
   3. “Joint Controller” with the other Party;
   4. “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 *(Processing Personal Data)* which scenario they think shall apply in each situation.

**Where one Party is Controller and the other Party its Processor**

1. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 *(Processing Personal Data*) by the Controller.
2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing.  Such assistance may, at the discretion of the Controller, include:
   1. a systematic description of the envisaged Processing and the purpose of the Processing;
   2. an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
   3. an assessment of the risks to the rights and freedoms of Data Subjects; and
   4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
4. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
   1. Process that Personal Data only in accordance with Annex 1 *(Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
   2. ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms*,* which  the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
      1. nature of the data to be protected;
      2. harm that might result from a Personal Data Breach;
      3. state of technological development; and
      4. cost of implementing any measures;
   3. ensure that :
      1. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 *(Processing Personal Data*));
      2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
         1. are aware of and comply with the Processor’s duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
         2. are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
         3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
         4. have undergone adequate training in the use, care, protection and handling of Personal Data;
   4. not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
      1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
      2. the Data Subject has enforceable rights and effective legal remedies;
      3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
      4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
   5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
5. Subject to paragraph 8 of this Joint Schedule 11, the Processor  shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
   1. receives a Data Subject Access Request (or purported Data Subject Access Request);
   2. receives a request to rectify, block or erase any Personal Data;
   3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
   4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
   5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
   6. becomes aware of a Personal Data Breach.
6. The Processor’s obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
7. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
   1. the Controller with full details and copies of the complaint, communication or request;
   2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
   3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
   4. assistance as requested by the Controller following any Personal Data Breach; and/or
   5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.
8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
   1. the Controller determines that the Processing is not occasional;
   2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
   3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
10. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
11. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
    1. notify the Controller in writing of the intended Subprocessor and Processing;
    2. obtain the written consent of the Controller;
    3. enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
    4. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
12. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
13. The Relevant Authority may, at any time on not less than thirty (30) Working Days’ notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Relevant Authority may on not less than thirty (30) Working Days’ notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Where the Parties are Joint Controllers of Personal Data**

1. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11.

**Independent Controllers of Personal Data**

1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
2. 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.
3. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, 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.
4. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
5. The Parties shall only provide Personal Data to each other:
   1. to the extent necessary to perform their respective obligations under the Contract;
   2. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
   3. where it has recorded it in Annex 1 *(Processing Personal Data).*
6. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
7. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
8. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract **(“Request Recipient”)**:
   1. 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
   2. where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient  will:
      1. 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
      2. 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.
9. 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:
   1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
   2. implement any measures necessary to restore the security of any compromised Personal Data;
   3. 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
   4. 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.
10. 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 Annex 1 *(Processing Personal Data).*
11. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Contract which is specified in Annex 1 *(Processing Personal Data)*.
12. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.

## Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

1. The contact details of the Relevant Authority’s Data Protection Officer are: **[Insert** Contact details]
2. The contact details of the Supplier’s Data Protection Officer are: **[Insert** Contact details]
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 Annex.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **The Relevant Authority is Controller and the Supplier is Processor**  The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:     * ***[Insert*** *the scope of Personal Data which the purposes and means of the Processing by the Supplier is determined by the Relevant Authority]*   **The Supplier is Controller and the Relevant Authority is Processor**  *The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Relevant Authority is the Processor in accordance with paragraph* 3 *to paragraph 16* *of the following Personal Data:*     * ***[Insert*** *the scope of Personal Data which the purposes and means of the Processing by the Relevant Authority is determined by the Supplier]*   **The Parties are Joint Controllers**  *The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:*     * ***[Insert*** *the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]*     **The Parties are Independent Controllers of Personal Data**  *The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:*   * *Business contact details of Supplier Personnel for which the Supplier is the Controller,* * *Business contact details of any* *directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority’s duties under the Contract) for which the Relevant Authority is the Controller,* * ***[Insert*** *the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Relevant Authority cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the  Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Relevant Authority]*     ***[Guidance*** *where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]* |
| Duration of the Processing | *[Clearly set out the duration of the Processing including dates]* |
| Nature and purposes of the Processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| 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 | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**Annex 2 - Joint Controller Agreement**

**1. Joint Controller Status and Allocation of Responsibilities**

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 3-16 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 18-28 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Relevant Authority]:

1. is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
2. shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
3. is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
4. is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Deliverables where consent is the relevant legal basis for that Processing; and
5. shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier’s/Relevant Authority’s] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

1. **Undertakings of both Parties**
   1. The Supplier and the Relevant Authority each undertake that they shall:
2. report to the other Party every [x] months on:
   1. the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
   2. the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
   3. any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;
   4. any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
   5. any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

1. notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
2. provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
3. not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
4. request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
5. ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
6. take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
   1. are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
   2. are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
   3. have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
7. ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
   1. nature of the data to be protected;
   2. harm that might result from a Personal Data Breach;
   3. state of technological development; and
   4. cost of implementing any measures;
8. ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
9. ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.
10. Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
11. **Data Protection Breach**
    1. Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
12. sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and
13. all reasonable assistance, including:
    1. co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
    2. co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
    3. co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
    4. providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.
14. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has  lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was  that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
15. the nature of the Personal Data Breach;
16. the nature of Personal Data affected;
17. the categories and number of Data Subjects concerned;
18. the name and contact details of the Supplier’s Data Protection Officer or other relevant contact from whom more information may be obtained;
19. measures taken or proposed to be taken to address the Personal Data Breach; and
20. describe the likely consequences of the Personal Data Breach.
21. **Audit**
    1. The Supplier shall permit:
22. the Relevant Authority, or a third-party auditor acting under the Relevant Authority’s direction, to conduct, at the Relevant Authority’s cost, data privacy and security audits, assessments and inspections concerning the Supplier’s data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
23. the Relevant Authority, or a third-party auditor acting under the Relevant Authority’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

1. The Relevant Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier’s compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.
2. **Impact Assessments**
   1. The Parties shall:
3. provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

1. maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

1. **ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Relevant Authority may on not less than thirty (30) Working Days’ notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

1. **Liabilities for Data Protection Breach**

**[Guidance:** This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

1. If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
2. if in the view of the Information Commissioner, the Relevant Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Relevant Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
3. if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Relevant Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Relevant Authority and its auditors, on request and at the Supplier’s sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
4. if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).
5. If either the Relevant Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
6. In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):
7. if the Relevant Authority is responsible for the relevant Personal Data Breach, then the Relevant Authority shall be responsible for the Claim Losses;
8. if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
9. if responsibility for the relevant Personal Data Breach is unclear, then the Relevant Authority and the Supplier shall be responsible for the Claim Losses equally.

1. Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Relevant Authority.
2. **Termination**

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 of the Core Terms (*Ending the contract*).

1. **Sub-Processing**
   1. In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
2. carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the  other Party where reasonably requested; and
3. ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

1. **Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.