Contract for the procurement of equipment, software & services

for the enFrame CIC ICT Framework

FTS no: TBC

Signed between

Contracting\_Authority

&

Supplier\_Name

Date

--- Important ---

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Drafting Note: - Draft Purchase of Equipment (and Services) Agreement

(enFrame ICT framework - Call-off Contract)

Important: Please delete all drafting notes before signing.

1. This agreement is for use in the purchase of goods such as computer equipment, telephony, monitors, print devices, tablets, handsets, security/CCTV hardware, projectors, laptops, digital signage, cables, educational devices, associated gear, and equipment etc. This agreement also covers ancillary services necessary to supply, deliver, 'unbox', test, set-up, and implement the procured goods. Some of these goods may also come with embedded, pre-loaded or associated systems and operating software.

2. This agreement does not extend to cover on-going management and operation and maintenance of purchased goods. To the extent purchased goods are to be managed by the supplier over time, then that will need to be referenced in the managed services agreement and those particular goods will need to be listed in the relevant schedule to the managed services agreement.

3. This agreement does not cover any SaaS (software as a service), IaaS (infrastructure as a service), PaaS (platform as a services), HaaS (hardware as a services); or hardware rental or lease financing. If relevant, these will be covered in the separate software as a service agreement or managed services agreements. The software addressed in this agreement would relate to software embedded/provided as part of the hardware supplied (e.g. where loaded onto it such as laptop operating systems / Microsoft applications, or third party apps on mobile phones containing standard off the shelf software applications etc.) These may be subject to manufacturer/third party licensor own T&Cs/EULAs or Supplementary Terms, which the Supplier should list and make clear where that is the case. However, this agreement is not intended to be a Software Licence Agreement or Software Development Agreement.

4. Parties to ensure the contents of the schedules are comprehensive, detailed, include any required availability measures, timings and performance dates and are completed to address all elements of the Service Requirements and Service Specification. They should be joined up and crossed referenced where applicable e.g. where certain goods require particular set-up services etc.

5. The provision for Supplementary Terms is intended to provide for additional supplementary, project specific requirements, and to be valid must only be included in line with public procurement regulations and should not represent material changes to the framework's standard terms. The parties should consider taking legal advice where necessary to ensure any such Supplementary Terms to be included are in line with public procurement regulations.

6. This agreement is not designed for use to govern substantive, regulated construction activities (e.g. CDM, planning and building control regulated tasks such as structural renovations and installations, substantive physical infrastructure fit-outs, walls removal and built environment construction related tasks.)

7. Key requirements should be added into the schedules to the extent known (e.g. key requirements of any set-up services of a supplier).

8. As highlighted during initial discussions, procurement law prohibits subsequent material changes to procurement contracts. Such material changes could be deemed unlawful. Please have regard to this risk in relation to any proposed changes in service scope and when/ if adding any Supplementary Terms via Schedule 6. If you have any concerns in this area regarding what constitutes a material change, we strongly recommend seeking further advice before making any changes to the contract.

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Purchase of Equipment (and Services) Agreement

Framework No: 2022/S 000-005186

|  |  |
| --- | --- |
| This agreement is dated: | Date |

Parties

1. Supplier\_Name incorporated and registered in England and Wales with company number: Company\_Number whose registered office is at Registered\_Office\_Address (Supplier).
2. Contracting\_Authority incorporated and registered in England and Wales with company number: Company\_Number whose registered office is at Registered\_Office\_Address (Customer).

Background

1. This agreement is called-off under a Framework Agreement entered into on May 2022, FTS No: 2022/S 000-005186 and shall be subject to the applicable processes, requirements and restrictions specified in the Framework Agreement.
2. The Supplier is in the business of providing specialist information and communications technology equipment and accompanying services.
3. The Customer wishes to engage the Supplier by this agreement under the Framework Agreement.
4. The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the goods and/or services (as defined below), subject to the terms and conditions of this agreement.

Agreed terms

1. Interpretation
   1. The definitions and rules of interpretation in this clause 1 apply in this agreement.

|  |  |
| --- | --- |
| Acceptance Date: | Has the meaning given in clause 1.1. |
| **Affiliates**: | Means in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time. |
| Background IPR: | In respect of any party, any Intellectual Property Rights owned by or licensed to that party independently of this agreement (whether prior to the Effective Date or otherwise) and used in the performance of a party's obligations under this agreement. |
| Business Day: | A day, other than a Saturday, Sunday, or public holiday in England when banks in London are open for business. |
| Change Control Procedure: | The procedures set out in clause 19. |
| Confidential Information: | All information (however recorded or preserved) made accessible to or disclosed by a party or its Representatives to the other party or that party's Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential or commercially sensitive because of its nature and the manner of its disclosure. |
| Contract Year: | Means a 12-month period commencing with the Effective Date of the agreement (or any anniversary of it). |
| Customer Account Team: | The individuals appointed by the Customer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this agreement. The initial members of the Customer Account Team are listed in Schedule 2. |
| Customer Policies: | Those policies further set out in Schedule 5. |
| Customer Site(s): | Any premises occupied by the Customer at which it receives the Services. |
| Customer’s Operating Environment: | The Customer’s computing environment (consisting of hardware, software, and telecommunications networks). |
| Customer's Project Manager: | The member of the Customer Account Team appointed in accordance with clause 7.1.3. The Customer's Project Manager at the Effective Date is named in Schedule 2. |
| Effective Date: | The date of this agreement. |
| EIR: | The Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| Equipment: | The goods procured by the Customer from the Supplier under this agreement, and (as applicable) which may be delivered, unboxed, installed/commissioned by the Supplier at the Customer Site(s) in accordance with the terms of this agreement and in particular in accordance with Schedule 3 and Schedule 4. |
| Fees: | The fees payable to the Supplier, as described in Schedule 1. |
| **FOIA:** | The Freedom of Information Act 2000, and any subordinate legislation made under the 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: | Means an event which is beyond the reasonable control of the party seeking to rely on such event (except to the extent such party could reasonably have avoided such event or its consequences by implementing such business continuity and/or disaster recovery measures and otherwise exercising such level of care in each case as could reasonably be expected of a party in its position), including:   * 1. riot, civil unrest, military action, terrorism or war (whether declared or not) or threat of or preparation for war;   2. imposition of sanctions, embargo, blockade, or breaking off of diplomatic relations;   3. epidemic (including any Public Health Emergency of International Concern or pandemic declared by the World Health Organization) or pandemic;   4. any failure or refusal of any government or public authority to grant any necessary licence, permit or consent;   5. interruption or failure of a utility service or telecommunications network and/or breakdown of plant or machinery;   6. severe delays or disruptions to the use of railways, shipping, aircraft, motor transport or other means of public or private transport;   7. any change in applicable law which materially impacts a party’s ability to perform any obligation under this agreement;   8. earthquake, storm, fire, flood, landslide or other natural disaster; and   9. industrial action, strikes or lock-outs by employees of third parties (excluding sub-contractors and suppliers of the party seeking to rely on such event unless no substitute is reasonably available) |
| Foreground IPR: | Any Intellectual Property Rights (excluding Background IPR) arising or obtained or developed in the course of the performance of a party's obligations under and in connection with this agreement. |
| Framework Agreement: | The framework agreement entered into on May 2022, FTS No: 2022/S 000-005186. |
| Good Industry Practice: | The standards that fall within the upper quartile for the provision of business-critical services substantially similar to the Services, having regard to factors such as the nature and size of the parties, the term, the pricing structure and any other relevant factors. |
| Information: | Has the meaning given under section 84 of FOIA. |
| Initial Term: | The period from the Effective Date until contract\_end\_date. |
| Intellectual Property Rights: | Patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of and rights to claim priority from such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Latent Vulnerability: | Any instances of typical classes of Vulnerability. For example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection. |
| Mitigate: | The taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly. |
| Permitted Purpose: | Has the meaning given in clause 17.2.1. |
| Regulatory Requirement: | Has the meaning given in clause 16.8. |
| Relevant Terms: | Has the meaning given in clause 22.3. |
| Representatives: | In relation to a party, its employees, consultants, officers, agents, contractors, subcontractors, representatives and/or advisors involved in provision or receipt of the Services. |
| Request for Information: | A request for information or an apparent request under FOIA or EIR. |
| Services: | Any services to be provided under this agreement such as the delivery, unboxing, installation, and commissioning of purchased Equipment, including any warranty management services and the provision of associated services to be provided pursuant to this agreement as described in the Services Requirements and Services Specification, and Set-up Services. |
| Services Specification: | The Services scope and specification in relation to the required Equipment (including any functionality, performance, and formally accepted specification related clarifications) as detailed by the Supplier and described in Schedule 4, and which shall cover (as a minimum) all Customer's Service Requirements. |
| Service Requirements: | The Customer's requirements for the Equipment and any accompanying Services, as set out in the Further Competition ITT documents dated ITT\_documents\_publish\_date, or as otherwise detailed by the Customer as a Service requirement/specification. |
| Set-up Services: | The due diligence, preparation, security checks, delivery, unboxing, installation, configuration and commission of the Equipment at the Customer Site and any other related set-up and preparatory implementation work referred to in Schedule 3, to be performed by the Supplier as required in order to set up and implement the Equipment. |
| Software: | All computer software embedded in/loaded on/included with the Equipment or as may otherwise be made available to the Customer by the Supplier as part of the provision of Equipment and Services. |
| Supplementary Terms: | Those supplementary terms specified in Schedule 6 agreed by the parties to apply to this agreement to the extent strictly necessary to address specific Software (including any third-party software supplementary and end user terms) or Equipment and Services provision. |
| Supplier Account Team: | The individuals appointed by the Supplier from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this agreement. The initial members of the Supplier Account Team are listed in Schedule 2. |
| Supplier's Project Manager: | The member of the Supplier's Account Team appointed in accordance with clause 3.2. The Supplier's Project Manager at the Effective Date is named in Schedule 2. |
| Virus: | Includes any malicious code, Trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software or the Services. |
| Vulnerability: | A weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly. |
| Warranty Period: | Has the meaning given in clause 6.3. |

* 1. Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
  2. A reference to a statute or statutory provision is a reference to it as amended, extended, consolidated, replaced, superseded, re-enacted or otherwise converted, modified or incorporated into law from time to time.
  3. A reference to writing or written includes faxes.
  4. Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
  5. This agreement expressly excludes Supplier’s terms and conditions of sale, however these are purported by the Supplier to apply, unless limited, specific/select terms are agreed by both parties to be included as Supplementary Terms, or as part of the Supplier's Set-up Services, but always subject to the order of priority set out in clause 1.7).
  6. The Schedules and any included appendices and attachments form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules and included appendices and attachments and the background section. If there is an inconsistency or conflict between any of the provisions in the main body of this agreement and the Schedules and accompanying appendices and attachments, the order of priority shall be (in descending order or priority):
     1. The terms and conditions in the main body of this call-off agreement shall take priority; then
     2. Applicable terms of the Framework Agreement as set out in clause 1.8; then
     3. Schedule 8 (Data Protection); then
     4. Schedule 6 (Supplementary terms); then
     5. Appendices/attachments[.] [; then]
     6. [The remaining Schedules.]

[**Guidance/drafting note**: enFrame to insert particular order of remaining schedules OR insert as new 1.7.7 "The remaining Schedules " noting however that that would not resolve conflict among such remaining schedules.]

* 1. The following provisions of the Framework Agreement shall be expressly applicable to this call-off agreement: clause 4.1 (warranties and representations); clause 5.10 (Fraud); clauses 5.12/13 (consequences of suspension, ending and expiry of the Framework Agreement); clauses 7.36/37 (transfer and sub-contracting); clauses 7.55/56 (IPR); clause 7.83 (Confidentiality).

1. Service requirements
   1. The Supplier warrants and represents that:
      1. when producing and/or refining the Services Specification it has taken account of and effectively incorporated all elements of the Customer's Service Requirements; and
      2. it is able to and shall provide all of the Equipment and Services as described in the Services Specification in accordance with all applicable descriptions, as further set out and described in the Service Requirements and otherwise as described in this agreement,

and the Supplier acknowledges that the Customer is entering into this agreement in reliance on the warranties and representations provided by the Supplier in this agreement.

* 1. The Supplier acknowledges and agrees that, prior to the Effective Date:
     1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Service Requirements and has asked the Customer all the questions and clarifications it considers to be relevant for the purpose of establishing whether it is able to provide the Equipment and Services in accordance with the terms of this agreement; and
     2. it has received all information it needs to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement.

1. Delivery of Equipment and Set-up Services
   1. The Supplier Account Team shall consist of the personnel listed in Schedule 2.
   2. The Supplier shall appoint the Supplier's Project Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. Notwithstanding clause 3.1, the Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project Manager, but has the right, in its absolute discretion, to replace them from time to time where reasonably necessary in the interests of the Supplier's business.
   3. The Supplier shall use all reasonable endeavours to (as applicable):
      1. supply and (as applicable) deliver, unbox, install and commission the Equipment at the Customer Site(s);
      2. inspect and test the Equipment (under the supervision of the Customer where requested) following delivery, in accordance with clause 4, to ensure the Equipment is undamaged and complies with the terms of this agreement and any manufacturer specifications and warranties; and
      3. provide the Customer with such training on the operation of the Equipment as the Customer considers reasonable or as is specified in the Services;

in accordance with the terms of this agreement and any particular instructions that may be set out in Schedule 3 and Schedule 4.

* 1. Unless required as part of services to be undertaken by the Supplier, the Customer shall prepare the Customer Site(s) in readiness for reception of the Equipment and for the provision of all necessary supervision, access, utilities and facilities reasonably required to take delivery of the Equipment.
  2. The Supplier shall use all reasonable endeavours to perform any agreed Set-up Services in accordance with the timetable set out in Part 1 of Schedule 3 and to meet the performance dates set out in Schedule 3, but any such timetable and dates shall be estimates only, and time shall not be of the essence in this agreement, unless specific dates are agreed to be of the essence by the parties.
  3. The Supplier shall apply Good Industry Practice at all times in supplying the Equipment and providing any Services, including Set-up Services.

1. Testing and Acceptance
   1. The acceptance procedure(s) shall be as follows:

[Drafting Note: The parties may agree/refine the testing and acceptance procedure(s) here (including by reference to any criteria) to be fit for the specific purpose/Equipment and Services to be supplied]

* + 1. once the Equipment has been delivered by the Supplier to the applicable Customer Site(s), and inspection and successful testing by the Supplier (under the Customer's supervision where required) has taken place; and once the Equipment is determined to be free of damage; is complete and functioning properly; and otherwise supplied in accordance with all requirements, and has been properly installed or the Set-up Services performed and successfully tested by the Supplier, then:
    2. the Equipment and Services (as applicable) shall be accepted by the Customer in writing (such acceptance not to be unreasonably withheld);
    3. provided that the Equipment and Services shall be deemed accepted by the Customer if the Customer has not notified the Supplier in writing of its acceptance, or issued notice of finding material damage, non-performance or other failures in relation to the provision of Equipment or the Services within a reasonable period thereafter.
  1. Where acceptance is not provided, or notice of damage, non-performance or failing(s) is issued by the Customer in accordance with clause 4.1, the Supplier shall, at its own expense and within a reasonable time from being requested by the Customer, replace or rectify (or procure the replacement or rectification of) any damaged, defective or failed Equipment, and re-perform any applicable Services.
  2. Notwithstanding clause 4.2, if the failure or defect cannot be rectified, or if the Services cannot be successfully re-performed, then the Supplier shall collect, at its own expense, the defective Equipment (or component parts if applicable) and will provide an appropriate refund to the Customer of any paid Fees.

1. Title and risk
   1. Risk in the Equipment shall pass to the Customer following delivery of the Equipment by the Supplier to the Customer Site.
   2. The legal and beneficial ownership of the Equipment shall pass to the Customer following the Customer's acceptance in accordance with clause 4.
   3. This clause 5 shall survive termination of the agreement, howsoever arising.
2. Supplier's obligations
   1. The Supplier undertakes that the provision of Equipment and Services will be performed with all reasonable skill and care and at all times in accordance with Good Industry Practice and in accordance with the provisions of this agreement, and that all Equipment and Services will be provided substantially in accordance with the Service Requirements and Services Specification.
   2. The undertaking in clause 6.1 shall not apply to the extent of any material non-conformance that is caused by use of the Equipment and Services contrary to the Supplier's (or manufacturer's) instructions, including as set out in this agreement.
   3. The Supplier shall use all reasonable endeavours to transfer (or procure the transfer) to the Customer the benefit of any manufacturer guarantees and/or warranties which apply to the Equipment and Services. Any benefit so transferred shall apply to the Customer to the maximum extent permitted (and at least for the duration as the period during which the Supplier would have received the same benefit) (the **Warranty Period**). If the Customer requires to claim the benefit of any such guarantee or warranty during the Warranty Period in respect of any Equipment and Services, the Supplier shall provide the Customer, on request, with reasonable assistance in enforcing the benefit against any applicable third party / manufacturer or supplier of the Equipment and Services, and managing any such guarantee or warranty claim(s) at no additional expense to the Customer, unless any such management Services are expressly agreed by the Customer to be subject to management Fees.
3. Customer's obligations
   1. The Customer shall:
      1. provide the Supplier with:
         1. all necessary co-operation in relation to this agreement (including the preparation of the Customer Site(s) as described in clause 3.4); and
         2. all necessary access to such information as may be reasonably required by the Supplier,

in order to provide the Equipment and Services, including any Customer security access information, and (subject to providing any confidentiality and security undertakings reasonably required by the Customer) software/API interfaces to the Customer's other business applications;

* + 1. provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by the Supplier from time to time. The Customer Account Team shall initially consist of the personnel listed in Schedule 2;
    2. appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right, in its absolute discretion, to replace them from time to time where reasonably necessary in the interests of the Customer’s business;
    3. comply with all applicable laws and regulations with respect to its activities under this agreement, including those set out in clause 22; and
    4. carry out all other Customer responsibilities and obligations set out in this agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties or performance of the Customer's responsibilities and obligations, the Supplier shall be entitled to an equitable adjustment to the date or dates in any delivery time schedule.

1. Data protection
   1. The parties agree to comply with the data protection provisions specified in Schedule 8 (data protection), which shall apply to this agreement.
2. Security and care
   1. The Supplier shall ensure (or procure that) at all times appropriate packaging, shipping, storage, insurance, safety and security systems, policies and procedures are maintained and enforced to prevent loss or damage to or unauthorised access of Equipment and Services under its control, and shall do so in accordance with Good Industry Practice. Where appropriate, all packaging shall be clearly marked as the Customer's goods, which shall be kept separate and distinguishable from any other parties' goods.
   2. The Supplier shall ensure that all Equipment (including any associated software, system or telecommunications systems and services) provided by or on behalf of the Supplier has been tested for Viruses and Latent Vulnerabilities and Known Vulnerabilities (as applicable), and any of the same that are identified are Mitigated against before the date of delivery or use of such software, systems or telecommunications by the Customer, and that all appropriate security systems and software (as applicable) accompany or are in place in respect of the Equipment and Services.
   3. The Supplier shall comply with, and shall procure that each of the sub-contractors complies with, the Customer's reasonable requirements, directions and procedures for vetting and supervising personnel in respect of all of Supplier's personnel (including sub-contractors) employed or engaged in the provision of the Equipment and Services where Supplier personnel shall be accessing Customer Sites.
   4. The Supplier shall:
      1. notify the Customer immediately if it becomes aware of any health and safety or security incident, and shall respond without delay to all queries and requests for information from the Customer about any incident, whether discovered by the Supplier or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under applicable health and safety, data protection or cybersecurity legislation, and that the Customer may be required to comply with statutory or other regulatory timescales;
      2. promptly cooperate with any request for information made in respect of:
         1. any security incident;
         2. any of the information provided in any policies referred to in clause 9.1; or
         3. any requests for information or data, or inspection(s), made by a regulator with competent jurisdiction over the Customer (including in connection with any applicable data protection or cybersecurity legislation).
3. Employment/TUPE
   1. The parties agree that due to the scope and nature of this agreement TUPE is not applicable in relation to the delivery of Equipment and performance of the Services by the Supplier.
4. Safeguarding
   1. The parties agree to comply with the safeguarding provisions specified in Schedule 7 (safeguarding), which shall apply to this agreement.
5. Warranties
   1. The Customer warrants and represents that:
      1. it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer; and
      2. it has the authority to grant any rights to be granted to the Supplier under this agreement.
   2. The Customer warrants that:
      1. it shall comply with and use the Equipment and Services in accordance with the terms of this agreement and any manufacturer instructions;
      2. the Supplier's use, in accordance with this agreement, of any information or materials (including third-party materials supplied by the Customer to the Supplier) shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.
   3. The Supplier warrants and represents that:
      1. it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Supplier;
      2. it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this agreement, including for the Customer's receipt and use of the Equipment and Services, and the Supplier shall not infringe or breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached; and
      3. it has the authority to grant any rights or licences to be granted to the Customer under this agreement, including the right to provide any applicable Software and any applicable hardware to the Customer as indicated in this agreement and for the same to be used in the receipt of accompanying Services and otherwise in connection with this agreement.
   4. The Supplier warrants that:
      1. the Services, including in the provision of Equipment and any component or replacement parts, provided or procured by the Supplier under this agreement, shall be free from defective workmanship and materials and will materially conform to the Customer's Service Requirements and the Services Specification;
      2. all Equipment (including any component parts) shall be new and shall not be second hand;
      3. it will, if it receives written notice from the Customer of any breach of the above warranties at clauses 12.3 to 12.4.2, at its own expense, and within a reasonable time after receiving such notice, rectify any failure or defect in relation to the breach and any relevant Equipment or Services.
      4. it shall use all reasonable skill and care in providing the Services;
      5. the Services will be provided in a professional and competent manner;
      6. it shall comply with all laws and regulations applicable to the Supplier in performing or procuring the performance of its obligations under this agreement;
      7. it is and shall remain throughout the term of this agreement compliant (and certified by an independent, reputable and competent certification body to be compliant) with, and shall provide the Services in line with, a then-current version of: International Standards Organisation (ISO) / International Electrotechnical Commission (IEC) 27001, ISO 9001 and Information Technology Infrastructure Library (ITIL);
      8. the Customer's receipt, possession and use in accordance with this agreement of any information, software and materials (including third-party materials) supplied by the Supplier to the Customer shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party;
      9. all personnel and sub-contractors used by the Supplier in the performance of this agreement are adequately skilled and experienced and vetted for the activities they are required to perform; and
      10. it will not introduce, or permit the introduction of, any Viruses or Known Vulnerabilities or Latent Vulnerabilities into Customer's Operating Environment or the Customer's other network and information systems, while performing the Services.
6. Charges and payment
   1. The Customer shall pay the Fees for the Equipment and Services, as set out in Schedule 1.
   2. All amounts and Fees stated or referred to in this agreement are excluding value added tax (**VAT**) which shall be added to the Supplier's invoice(s) at the appropriate rate.
   3. The Supplier shall invoice the Customer in the manner and timing as set out at Schedule 1.
   4. If the Customer fails to make any undisputed payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 16, the Customer shall pay interest on the overdue amount at the rate of three (3)% per annum above [HSBC's\_base\_rate] from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
7. Intellectual Property rights
   1. All Background IPR is and shall remain the exclusive property of the party owning it (or where applicable, the third party from whom its rights have derived).
   2. Background IPR shall not be used by any party in the performance of its obligations under this Agreement in the knowledge that the use of such Background IPR will infringe third party rights.
   3. The Supplier hereby grants or shall procure the grant to the Customer (including its Affiliates) such [non-exclusive, non-transferable, royalty-free, [sub-licensable] licence and rights of use in the Software associated with the Equipment and that of the Supplier's Intellectual Property Rights, as may be necessary for the Customer to receive the full benefit of the Equipment and Services for the purposes and to the extent required by this agreement.

**Drafting Note**: The parties may agree/refine here (including by reference to any applicable Supplementary Terms) to be fit for the specific purpose, Equipment and Software/Services to be supplied]

* 1. The Customer agrees not to (and shall not permit any third party to) reverse engineer, decompile, disassemble, adapt, or otherwise modify the Software on/with the Equipment, unless to the extent permitted by law or in accordance with and for the purposes of this agreement.
  2. The provisions of this clause 14 shall survive termination of this agreement.

1. Limitation of liability and Indemnities
   1. This clause 15 prevails over all other clauses and sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and sub-contractors) in respect of any breach of this agreement, the Services provision, and any representation, misrepresentation (whether innocent or negligent), statement, or tortious act or omission (including negligence) arising under or in connection with this agreement.
   2. Nothing in this agreement shall exclude or limit the liability of the parties:
      1. for death or personal injury caused by a party's negligence;
      2. for fraud or fraudulent misrepresentation;
      3. for any liability arising under or in connection with clause 15.5 (third party IPR infringement indemnity); or
      4. any liability which cannot be excluded or limited by applicable law.
   3. Subject to clause 15.2, neither party shall be liable for any:
      1. indirect or consequential losses, damages, costs or expenses;
      2. loss of actual or anticipated profits;
      3. loss of goodwill;
      4. loss of business;
      5. loss of contracts; and
      6. lost opportunity;

whether or not such losses were reasonably foreseeable or the party in default or its agents had been advised of the possibility of the other incurring such losses.

* 1. Subject to clauses 15.2 and 15.3, the total aggregate liability of each party to the other for all causes of action, loss and damage:
     1. arising under or in connection with clause 8 or Schedule 8 (Data Protection) shall be limited to 400% (four hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement; or
     2. for all other causes of action, loss and damage arising under or in connection with this agreement shall be limited to 200% (two hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement.
  2. The Supplier agrees to indemnify the Customer and keep it indemnified at all times against all or any costs, claims, losses, damages or expenses incurred by the Customer, or for which the Customer may become liable, arising in respect of any third party Intellectual Property Rights infringement claim(s) relating to the Customer's proper use of the Equipment, Software or Services supplied by the Supplier to the Customer, except that this indemnity shall not apply to the extent any such claims arise or relate to Customer's failure to comply with the terms of this agreement (including any Supplementary Terms).
  3. The limitation of liability under clause 15.4 has effect in relation both to any liability expressly provided for under this agreement, and to any liability arising by reason of the invalidity or unenforceability of any term of this agreement.
  4. This section 15 shall survive termination or expiry of the agreement, howsoever arising.

1. Term and termination
   1. This agreement shall commence on the Effective Date. Unless terminated earlier in accordance with this clause 16, this agreement shall continue in force for the Initial Term and shall automatically expire at the end of the Initial Term. The parties may extend the agreement beyond the Initial Term, by agreement in writing, if appropriate in the circumstances.
   2. Without prejudice to any rights that have accrued under this agreement or any of its other rights or remedies, the Customer may terminate this agreement for convenience at any time on giving not less than 3 weeks' written notice to the Supplier, provided that on any such termination it shall, without prejudice to any accrued rights or obligations as at that time, only be obliged to pay to the Supplier a reasonable proportion of the Supplier's legitimate fees incurred when Equipment that has been ordered in advance by the Supplier at the Customer's request is no longer to be supplied to the Customer as a result of such early termination under this clause (the **Termination Sum**). The Supplier shall, within 3 Business Days of receiving a request from the Customer, confirm to the Customer what the value of the Termination Sum would be at the date of such request.

**Drafting Note**: Specific details on compensation for early termination for convenience could be refined further at the contracting stage

* 1. Without prejudice to any other right or remedy available to it, either party may terminate this agreement (in whole or in part) with immediate effect by giving written notice to the other party if:
     1. the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
     2. the other party commits a series of breaches of this agreement which are each individually not material but which occur sufficiently often within a sufficiently short period to have, in aggregate, the effect of being a material breach;
     3. the other party breaches any of the terms of clause 17;
     4. the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
     5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
     6. a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
     7. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other party;
     8. the holder of a qualifying floating charge over any of the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
     9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
     10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3.4 to clause 16.3.9 (inclusive);
     11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
     12. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
  2. The party not affected by a continuing Force Majeure Event may terminate this agreement in accordance with clause 20.1.
  3. Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this agreement shall remain in full force and effect.
  4. Expiry or termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.
  5. On expiry or termination of this agreement for any reason:
     1. the Supplier shall immediately cease provision of the Services (unless any specific Services are agreed (in whole or part) to continue);
     2. other than in respect of Equipment for which title has validly passed to the Customer in accordance with the terms of this agreement (and thereby which shall be handed over to or retained by the Customer), each party shall return and make no further use of the other's equipment, property, materials, documents, Confidential Information, and other items (and all copies of them) belonging to the other party; and
     3. Other consequences of termination

**Drafting Note**: Parties can refine/add detail to these consequences of termination as required

* 1. If a party is required by any law, regulation, or government or regulatory body (Regulatory Requirement) to retain any documents or materials which it would otherwise be obliged to return or destroy, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 17 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

1. Confidentiality
   1. The provisions of this clause 17 shall not apply to any Confidential Information that:
      1. is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 17);
      2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
      3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
      4. was known to the receiving party before the information was disclosed to it by the disclosing party;
      5. the parties agree in writing is not confidential or may be disclosed; or
      6. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
   2. Each party shall keep the other party's Confidential Information secure and confidential, and shall not:
      1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
      2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement.
   3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.
   4. The Customer:
      1. acknowledges and agrees that the Supplier's Confidential Information includes any designs, plans, software, preparatory materials, or other materials created by the Supplier in connection with the Services; and
      2. agrees not to make use of any such designs, plans, software, or other materials for any purpose other than receipt of the Services.
   5. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
      1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
      2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 17.
   6. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court, arbitral or administrative tribunal or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 17.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
   7. The provisions of this clause 17 shall continue to apply after expiry or termination of this agreement for any reason.
2. Freedom of information
   1. The Supplier acknowledges that the Customer is subject to the requirements of FOIA and EIR. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under FOIA and EIR;
      2. transfer to the Customer all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
   2. The Supplier acknowledges that the Customer may be required under FOIA and EIR to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with FOIA and/or EIR.
3. Change control
   1. If either party wishes to change the scope of the Services (including Customer requests for additional or varied Services), it shall submit details of the requested change to the other party in writing using the template change request form included at Schedule 9.
   2. If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
      1. the likely time required to implement the change;
      2. any variations to the Fees arising from the change; and
      3. any other impact of the change on the terms of this agreement.
   3. If either party wishes the other party to proceed with the relevant change referred to in clause 19.2, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges and any other relevant terms of this agreement to take account of the change.
   4. Both parties shall maintain a change log to record all changes agreed between them. All changes shall be in writing and signed by the authorised representatives of the parties.
4. Force majeure
   1. Neither party shall have any liability to the other under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, arising from any Force Majeure Event, provided that:
      1. the other party is promptly notified of such an event and its expected duration; and
      2. it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for 4 weeks or more, the party not affected may terminate this agreement by giving not less than 14 days' written notice to the other party.

* 1. If the Force Majeure Event results in the suspension of all or any part of the Services, then the Customer shall not be obliged to pay the relevant Fees until such time as the Force Majeure Event shall have ceased to have effect and the Services recommence and are delivered in accordance with this agreement.

1. Inspections
   1. The Supplier shall permit the Customer to inspect and have access to any records kept in connection with the exercise of this agreement, for the purposes of ensuring that the Supplier is complying with the terms of this agreement, provided that the Customer provides reasonable advance notice to the Supplier of such inspections, which (except in the case of emergency) shall take place at reasonable times on Business Days.
   2. The Customer shall use its reasonable endeavours to ensure that the conduct of each inspection does not unreasonably disrupt the Supplier (or any of its sub-contractors) or delay the provision of any of the Services by the Supplier.
   3. Subject to the Customer's obligations of confidentiality, the Supplier shall provide (and procure that its sub-contractors provide) the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each inspection.
   4. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause.
2. Compliance and policies
   1. The Supplier shall:
      1. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
      2. comply with the Customer Policies included with this agreement at Schedule 5 in each case as the Customer (or the relevant industry body) may update them from time to time;
      3. have and maintain in place throughout the term of this agreement its own relevant business and operational policies and procedures, including adequate procedures under the Bribery Act 2010, including to ensure compliance with the Relevant Requirements and clause 22.1.2, and shall enforce them where appropriate;
   2. In performing its obligations under this agreement, and when at the Customer Site, the Supplier shall comply with the Customer's reasonable security, health and safety and safeguarding requirements and policies.
   3. The Supplier shall ensure that any person engaged by or associated with the Supplier or who is otherwise performing or delivering Equipment and Services under and in connection with this agreement for the Supplier, including any representatives, agents or sub-contractors and consultants of the Supplier, does so only on the basis of a written contract that imposes on, to the extent relevant, and secures from each such person terms substantively equivalent to those imposed on the Supplier by this agreement (Relevant Terms). The Supplier shall at all times be responsible and liable for the activity of any such persons in relation to this agreement and the observance and performance by such persons of the Relevant Terms, and the Supplier shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms, and Supplier shall at all times monitor, manage and supervise such persons and procure that any such person is compliant with and acts in accordance with the scope, terms and purposes of this agreement.
   4. Breach of this clause 22 shall be deemed a material breach under clause 16.3.1.
3. Notices
   1. Any notice or other formal communication required to be given to a party under or in connection with this agreement shall be in writing and shall be:
      1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office;
      2. sent by fax to the other party's main fax number; or
      3. sent by email to Customer\_Email in the case of the Customer and Supplier\_Email in the case of the Supplier or such other email as may be notified to the other party from time to time.
   2. Any notice or communication shall be deemed to have been received:
      1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
      2. if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting, or at the time recorded by the delivery service;
      3. if sent by fax, at 9.00 am on the next Business Day after transmission; or
      4. if sent by email, at 9.00 am on the next Business Day after transmission provided that a failed transmission notification is not received and provided that the recipient of the email notice has replied to the sender acknowledging receipt of the notice within [3] Business Days of initial transmission.

**Drafting Note**: To refine the particular notice that is acceptable to the parties at the contracting phase i.e. whether Fax is relevant (if there is no monitored fax machine for example it should be removed). Also to note that current email provisions require a return 'acknowledgment email', so to stop the recipient effectively rejecting notice by not acknowledging, the email should also be followed up with notice in writing for example.

* 1. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

1. Dispute resolution
   1. If any dispute arises in connection with the agreement senior Representatives of both parties shall within seven (7) days of a written request from one party to the other, meet and act in a good faith effort to resolve the dispute before seeking any other remedies.
   2. If the dispute is not resolved at the meeting described in clause 24.1, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request shall be sent to CEDR. The mediation shall start not later than five (5) days after the date of the ADR notice. Commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
   3. Notwithstanding any other provision of this agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
2. Insurance

During this agreement and for a period of three years afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

* + 1. public liability insurance with a limit of at least **£5 million** a claim; and
    2. product liability insurance with a limit of at least **£5 million** for claims arising from a single event or series of related events in a single calendar year; and
    3. professional indemnity insurance with a limit of at least **£2 million** for claims arising from a single event or series of related events in a single calendar year; and
    4. employer's liability insurance with a limit of at least **£5 million** for claims arising from a single event or series of related events in a single calendar year.

1. General terms
   1. **No waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
   2. **Severance.** If any provision or part-provision of this agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, that provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under this clause 26.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
   3. **Entire agreement.**  This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings, and agreements between them relating to its subject matter.
   4. **No reliance.**  Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
   5. **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties by their authorised representatives.
   6. **Supplier assignment.** The Supplier may not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under this agreement without the written consent of the Customer (not to be unreasonably withheld). On Customer's request the Supplier shall provide all details and background reasonably required by Customer of any Supplier sub-contractor that is to provide substantive services and resources in the delivery of the Equipment and Services under and in connection with this agreement.
   7. **Customer assignment.** The Customer may, without the prior written consent of the Supplier (but providing advance notice and consulting with the Supplier) assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement.
   8. **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or (except as provided for and specified in the agreement) constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
   9. **Third party rights.** Except as expressly provided elsewhere in this agreement, no one other than a party to this agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.
   10. **Publicity.** Neither party shall refer to the other party in any marketing materials or communications with third parties without the other party's prior written consent.
   11. **Rights and remedies.** Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
   12. **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
   13. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

1. Fees

Drafting Note:

In respect of fixed/variable/estimates etc. Where fees are to be fixed/capped/'all-in', it should be expressly and specifically clear where this is the case (including by reference to what is in/out of scope to those fixed/capped fees - such as for example accompanying professional services, set-up, third party licensed software, additional warranty cover costs etc.

The parties should make expressly clear if fees include all updates and upgrades/new versions of any software used over the course of the agreement with any applicable Equipment).

* + - 1. [Equipment Fees]
      2. [Services Fees]

1. Personnel
   * + 1. Supplier
          1. Supplier Account Team:

|  |  |
| --- | --- |
| Account Manager | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |
| Account Representative | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |
| Account Representative | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |

* + - * 1. Supplier's Project Manager: [Name].
      1. Customer
         1. Customer Account Team:

|  |  |
| --- | --- |
| Executive Sponsor | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |
| Project Representative | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |
| Project Representative | **Name**: [Please complete]  **Phone number**: [Please complete]  **Email address**: [Please complete] |

* + - * 1. Customer's Project Manager: [Name].
        2. Customer support representatives: [Names of staff who can request support].

Drafting Note: You may want to specify minimum levels of seniority/experience per role.

1. Set-up Services
   * 1. Outline

**Drafting Notes:** Complete or replace as applicable

* + - 1. Timetable

|  |  |  |
| --- | --- | --- |
| Stage | Timetable | |
|  | Estimated start date | Estimated completion date |
| Planning and Due Diligence: |  |  |
| Implementation: |  |  |
| Roll-out: |  |  |

* + - 1. Planning and Due Diligence
         1. The Supplier shall conduct a due diligence exercise to examine all relevant Customer Sites and all other hardware and software aspects addressed by the Service Requirements and Services Specification in order to enable it to deliver the Services and install, set-up and configure the Equipment.
      2. Implementation and set-up
         1. The Supplier shall plan, set-up and implement the Services in accordance with the implementation provisions of this agreement and with the effect that the Services and Equipment are available for use by the Customer in accordance with this agreement.

**Drafting Note:** Parties to agree if any test environments / test criteria and protocols need to be established as part of set-up/implementation.

* + - 1. Roll-out
         1. The Supplier and the Customer shall co-operate in rolling out the Services such that the Services and Equipment are available for use by the Customer including the provision of any necessary training to Customer Representatives in order to enable the Customer to effectively use the Services and Equipment.

1. Services Specification

Add description of the services

**Drafting Note:** Add/edit below, as required/relevant to the equipment/services being covered]

* + - 1. Installation and configuration
         1. The Supplier shall procure, install, and configure and the Equipment and associated systems. [This includes the set up or rack mounting of servers or computer equipment, installation or interconnection of systems and software components, configuration of clustering and cross-connects, installation or connection to (including by API) the Software] Any specific installation and configuration requirements / instructions.
      2. All other relevant services / systems required to be provided along with the Equipment supply.

1. Customer policies

**Drafting Note:** Insert relevant customer policies (or links to) here. Examples provided below:

* + - 1. Safeguarding
      2. Acceptable Use
      3. Data Protection
      4. CSR
      5. Low Carbon / Net Zero commitments policies
      6. WEEE compliance/recycling coordination
      7. specific health and safety on-site and access/security policies
      8. publicity and brand usage guidelines

1. Supplementary Terms

**Drafting Note**: these supplemental terms (if any) should not include material changes to the agreement, and especially should not materially alter the risk profile of the agreement. They should be included only to the extent necessary to provide supplemental detail, third party/manufacturer product/software specific provisions, and practical provisions to the extent additional detail may be needed.

Supplementary terms may include overseas storage and shipping arrangements and how Equipment will be imported into the UK (addressing responsibilities such as import compliance and costs or tax) and whether any INCOTerms, or other terms relating to international shipments of goods, are needed. If so, care will be needed to ensure consistency of terms and that no material changes are made to the agreement.

1. Safeguarding
   * + 1. The Supplier undertakes to comply with the Customer's Child Protection Policy; Keeping Children Safe in Education; and other related safeguarding policies and procedures as notified to the Supplier from time to time.
       2. It is a condition of this agreement that the Supplier shall provide the Customer with written confirmation that the following checks have been completed on each of the Supplier Personnel before they can provide the Services at the Client's Premises:
          1. verification of identity against an official document containing a photograph of the individual;
          2. that a satisfactory enhanced disclosure from the Disclosure and Barring Service (DBS) has been obtained;
          3. that a check of the Children's Barred List has been completed and that the individual is not barred from working with children; and
          4. such other checks as are specified by the Customer from time to time in order for the Customer to comply with its statutory or regulatory obligations.
       3. The Supplier agrees to provide the Customer with written confirmation that the checks specified in paragraph 2 have been completed on each of the Supplier Personnel before they can commence work at the Customer's Premises.
       4. The Supplier shall procure that the Customer shall be able to see a copy of each DBS Certificate for each Supplier Personnel before they can commence work at the Customer's Premises, so that the Customer may reasonably determine whether the person to whom the DBS Certificate relates is appropriately identified and suitable to work at the Customer's Premises, and in order that the Customer can update the Single Central Record.
       5. The Supplier undertakes to allow a person authorised by the Customer to inspect the records it retains in respect of each of the Supplier Personnel on reasonable notice for the purposes of confirming that all of the checks in paragraph 2 have been properly completed.
       6. A person authorised by the Customer will check the identity of all members of the Supplier Personnel on or before the first day they attend at the Customer's Premises. It is a condition of this agreement that all Supplier Personnel provide acceptable evidence of their identity and address to the Customer. Acceptable evidence is deemed to be a current passport or photo card driving licence and a utility bill that is no more than three months old as of the day work, they are due to attend at the Customer's Premises for the first time. For the avoidance of doubt, no Supplier Personnel will be permitted to work at the Customer's Premises without such evidence being provided.
       7. Where the DBS Certificate applied for in respect of any Supplier Personnel has not been received by the Supplier or provided to the Customer by the date, they are due to attend the Customer's Premises, the Customer may at its complete discretion agree to the person commencing work if:
          1. all of the other checks set out at paragraph 2 of this agreement have been completed to the satisfaction of the Customer;
          2. it has completed a risk assessment and is satisfied that it is appropriate for work to commence; and
          3. it has been able to implement appropriate supervision for the person until such time as the DBS Certificate is received and determined to be suitable by the Customer.
       8. Where any Supplier Personnel carry out work at the Customer's Premises prior to the Customer receiving the DBS Certificate their continued attendance at the Customer's Premises will remain contingent on the DBS Certificate being provided for inspection and deemed satisfactory by the Customer.
       9. The Supplier undertakes to immediately notify the Customer upon becoming aware (or when the Supplier should have become aware) that:
          1. any of the Supplier Personnel are or become barred from working with children or adults;
          2. any of the Supplier Personnel are the subject of a referral to the DBS or any successor body;
          3. any of the Supplier Personnel are arrested, charged or convicted of any criminal offence the circumstances of which could have an impact on the welfare of children or adults;
          4. any of the Supplier Personnel receive a police caution, reprimand or warning the circumstances of which could have an impact on the welfare of children or adults;
          5. there is a formal child protection investigation of any of the Supplier Personnel or any member of their household under section 47 of the Children Act 1989, as amended;
          6. it becomes aware of any circumstances relating to any of the Supplier Personnel that may reasonably be considered to pose a safeguarding risk to children; or
          7. there is any change in the circumstances of any of the Supplier Personnel that affects their right to work in the UK.
       10. If the Supplier provides a notification to the Customer under paragraph 9, the Supplier agrees to provide the Customer with all information relevant to the notification so that the Customer may determine whether the person who is the subject of the notification remains suitable to attend the Customer's Premises.
       11. The Supplier undertakes and agrees to take such further steps as the Customer reasonably requires to enable the Customer to comply with its statutory or regulatory obligations to safeguard and promote the welfare of children and, upon request, will provide the Customer with such evidence as the Customer requires in order to demonstrate that such steps have been taken.
       12. The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any of the Supplier Personnel are barred from working with children under the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
       13. The Supplier shall take all steps reasonably required of it by the Customer in order to assist the Customer with making any referral to the DBS that the Customer is required to make due to the removal of Supplier Personnel from regulated activity in circumstances which trigger the duty to make a referral under the Safeguarding Vulnerable Groups Act 2006 as amended from time to time.
       14. Where any provision of this Schedule requires the Supplier to make any Personal Data available to the Customer, the Supplier shall take such steps as are necessary to ensure that it has a lawful basis for sharing that Personal Data with the Customer. Subject to the Supplier having taken such steps, the Customer agrees that the obligation of the Supplier to provide such Personal Data to the Customer shall be subject to the Supplier being permitted to do so in accordance with Data Protection Law.
       15. The Customer shall ensure the that the Supplier Personnel are trained in and operate within the Customer's Child Protection Policy and related safeguarding policies and procedures as in force and notified to the Supplier from time to time. The Supplier shall procure that the Supplier Personnel shall attend safeguarding training provided by the Customer if requested by the Customer.
       16. The Customer reserves the right, acting reasonably, to refuse any of the Supplier Personnel access to the Customer's Premises.
       17. The Supplier agrees that any breach by the Supplier of the provisions of this Schedule (Safeguarding) shall constitute an irremediable material breach of the agreement giving rise to a right of the Customer to terminate this agreement in accordance with clause [18.2] (termination for material breach) of the agreement.
       18. The Supplier agrees to provide an annual declaration in writing that their staff have read and understood Part One of Keeping Children Safe in Education.
2. Data Protection
3. Introduction and interpretation
   1. This Schedule sets out the parties’ rights and obligations in relation to Data Protection Law.
   2. The definitions and rules of interpretation in this paragraph apply in this Schedule.

|  |  |
| --- | --- |
| 1. Appendix: | The appendix to this Schedule. |
| 1. Controller: | Any person, agency or other body who falls under the definition of "Controller" or "controller" under Data Protection Law. |
| 1. Customer Data Subject: | An individual who is the subject of Customer Personal Data. |
| 1. Customer Personal Data: | Any Personal Data relating to any former, current, or prospective pupil, parent, member of staff of the Customer or former, current, or prospective member of the Customer's school community; any Personal Data held in the Customer Operating Environment any Personal Data made available by or on behalf of the Customer to the Supplier in connection with the Services or this agreement. |
| 1. Data Breach: | Any breach of Data Protection Law, any Personal Data Breach and anything that is both a breach of Data Protection Law and a Personal Data Breach. |
| 1. Data Protection Law: | The Data Protection Act 2018, the GDPR (to the extent applicable), the UK GDPR, any other applicable law concerning data protection, privacy, or confidentiality and any subordinate or related legislation. |
| 1. Data Subject: | An individual who falls under the definition of data subject under Data Protection Law. |
| 1. GDPR: | Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016, otherwise known as the General Data Protection Regulation. |
| 1. Joint Controller: | As described under Data Protection Law. |
| 1. **Relevant Occurrence**: | Any of the following: (a) any communication from the Information Commissioner's Office (or any other relevant data protection supervisory authority) concerning any Processing of Customer Personal Data; (b) any exercise, or purported exercise, by a Customer Data Subject of their rights in their Personal Data; (c) any complaint, enquiry or other communication from a Customer Data Subject relating to data protection compliance or relating to compliance with Data Protection Law; or (d) any actual or suspected Data Breach concerning Customer Personal Data. |
| 1. Personal Data: | Any information which falls under the definition of "personal data" under Data Protection Law. |
| 1. Personal Data Breach: | As defined in the UK GDPR. |
| 1. Processing**, Processed and Process**: | As described under Data Protection Law. |
| 1. Processor: | Any person, agency or other body who falls under the definition of "Processor" or "processor" under Data Protection Law. |
| 1. Sub**-Processor**: | As defined in paragraph 5.8. |
| 1. Relevant Occurrence: | Any of the following:   * 1. any communication from the Information Commissioner's Office (or any other relevant data protection supervisory authority) concerning any Processing by the Supplier of Personal Data or concerning any Processing of Customer Personal Data;   2. any exercise, or purported exercise, by a Customer Data Subject of their rights in their Personal Data;   3. any complaint, enquiry or other communication from a Customer Data Subject; or   4. any actual or suspected Data Breach concerning Customer Personal Data. |
| 1. Special Category Personal Data: | Those categories of Personal Data described in Article 9 paragraph 1 of the UK GDPR and Personal Data relating to criminal convictions and offences. |
| 1. Special Conditions: | Any additional terms and conditions described as such in the Appendix. |
| 1. **UK GDPR:** | The UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |

* 1. Any term defined in the main body of this agreement shall have the same meaning in this Schedule.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  3. The Appendix forms part of this Schedule and shall have effect as if set out in full in the main body of this Schedule. Any reference to this Schedule includes the Appendix.
  4. To the extent of any inconsistency between any of the provisions of this Schedule, the provision that places the greater obligation on the Supplier shall prevail.
  5. Unless stated otherwise, a reference to a paragraph number in this Schedule is a reference to a numbered paragraph in the main body of this Schedule.

1. Relationship between the parties
   1. The Customer is a Controller of Customer Personal Data. The Supplier is a Controller, a Processor, or both a Controller and a Processor of Customer Personal Data as described in the Appendix.
   2. Each party acknowledges that it will Process Personal Data relating to the other party's staff in connection with the administration and management of this agreement. Each party is a Controller in respect of such Processing.
   3. The Supplier's obligations in this Schedule shall apply regardless of whether the Supplier is a Controller or Processor of Customer Personal Data save that:
      1. Paragraph 3.4 shall only apply where the Supplier is a Controller. Paragraph 2.4 shall only apply where the parties are Joint Controllers;
      2. Paragraph 5 shall only apply where the Supplier is a Processor; and
      3. The Appendix may contain additional provisions that are specific to the Supplier as Processor or Controller as the case may be.
   4. The parties acknowledge that if they are Joint Controllers then they are required by Data Protection Law to agree their respective responsibilities for compliance. Unless the Appendix specifies otherwise, the parties consider that, where they are both a Controller in respect of Customer Personal Data then they are independent Controllers and not Joint Controllers. Notwithstanding this, if at any point the parties are Joint Controllers in respect of any Processing of Customer Personal Data, then (subject to any provisions in the Appendix) the following provisions shall apply to such Processing:
      1. The existing provisions of this Schedule shall continue to apply but where and to the extent that this Schedule does not allocate responsibility for compliance with Data Protection Law between the parties then each party shall be responsible for ensuring that any Processing of Customer Personal Data by or on behalf of it complies with Data Protection Law;
      2. The Customer shall be responsible for deciding on the action to take in response to a Relevant Occurrence. The Supplier shall provide the Customer with such assistance as the Customer requests in respect of any Relevant Occurrence; and
      3. Each party shall provide the other with reasonable co-operation, information and assistance, in a timely manner, to facilitate either or both party's compliance with Data Protection Law.
2. Compliance with Data Protection Law
   1. Each party shall comply with Data Protection Law in relation to this agreement and in relation to Customer Personal Data save that a party shall not be in breach of this paragraph to the extent that its non-compliance is a consequence of the other party's breach of this agreement.
   2. The Supplier shall only Process Customer Personal Data as is necessary in connection with this agreement or as is necessary in connection with the provision of the Services and shall not Process Customer Personal Data for any other purpose unless authorised to do so in writing by the Customer, save that nothing in the forgoing provisions of this paragraph shall prevent the Supplier from Processing Customer Personal Data to the extent necessary to comply with a non-contractual legal obligation.
   3. The Supplier shall ensure that its staff are appropriately trained to handle and Process Customer Personal Data in accordance with the requirements of Data Protection Law.
   4. Where the Supplier is a Controller of Customer Personal Data then the Supplier shall be responsible for its compliance with Data Protection Law. Without limit to the generality of the forgoing, the Supplier shall provide privacy notice information to Customer Data Subjects in accordance with its obligations under Data Protection Law and at the Supplier's request, the Customer shall provide the Supplier with reasonable assistance in connection with the Supplier's privacy notice obligations.
3. Security of Processing
   1. 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, the Supplier shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
      1. the pseudonymisation and encryption of Customer Personal Data;
      2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services in relation to Customer Personal Data;
      3. the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
      4. a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of Customer Personal Data.
   2. In assessing the appropriate level of security referred to in paragraph 4.1 above, the Supplier shall take into account in particular the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise Processed.
   3. The Supplier's obligations in this paragraph 4 are in addition to any obligations relating to the security of Personal Data in the Appendix.
   4. The Supplier acknowledges and agrees that it may Process Special Category Personal Data and other Personal Data that is by its nature highly confidential and the Supplier shall have regard to this when considering what constitutes appropriate technical and organisational measures for the purposes of this Schedule.
   5. The Supplier shall ensure that any transfer of Personal Data from or on behalf of it to the Customer is secure to the standard required by Data Protection Law.
4. The Supplier's obligations as Processor
   1. Unless the Customer instructs the Supplier in writing otherwise, the Supplier shall only Process Customer Personal Data to the extent necessary to provide the Services and in accordance with this agreement.
   2. The Supplier shall only Process Customer Personal Data on documented instructions from the Customer, including with regard to transfers of Personal Data to a country outside of the United Kingdom, or an international organisation, unless required to do so by applicable law to which the Supplier is subject; in such a case, the Supplier shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. For the avoidance of doubt, paragraph 5.1 constitutes documented instructions for the purposes of this paragraph.
   3. The Supplier shall not transfer Customer Personal Data outside of the United Kingdom, or otherwise Process Customer Personal Data outside of the United Kingdom, without the prior written consent of the Customer (such consent may be provided in the Appendix).
   4. The Supplier shall ensure that persons authorised to Process Customer Personal Data are contractually bound to keep such Personal Data confidential to at least the standard set out in this Schedule.
   5. The Supplier shall comply with Article 32 of the UK GDPR.
   6. The Supplier shall take steps to ensure that any natural person acting under the authority of the Supplier who has access to Customer Personal Data does not Process them except on instructions from the Customer, unless he or she is required to do so by applicable law.
   7. The Supplier shall not engage a Sub-Processor without prior specific written consent from the Customer.
   8. Where the Supplier engages another Processor for carrying out specific Processing activities on behalf of the Customer (a **Sub-Processor**), the same data protection obligations as set out in this Schedule shall be imposed by the Supplier on the Sub-Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law. Where that Sub-Processor fails to fulfil its data protection obligations, the Supplier shall remain fully liable to the Customer for the performance of the Sub-Processor's obligations. A list of current Sub-Processors used by the Supplier is provided in the Appendix. This paragraph shall constitute specific written authorisation for these Sub-Processors.
   9. Taking into account the nature of the Processing, the Supplier shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law.
   10. The Supplier shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR, and the Customer's equivalent obligations under any Data Protection Law which replaces the UK GDPR, taking into account the nature of Processing and the information available to the Supplier.
   11. The Supplier shall unless instructed to do otherwise by the Customer (such instructions may be contained in the Appendix) or an applicable law requires storage of the Personal Data by the Supplier:
       1. return all Customer Personal Data to the Customer after the end of the provision of services relating to the Processing; and
       2. ensure that it has not kept any copy of any such Customer Personal Data.
   12. The Supplier shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in the UK GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
   13. With regard to paragraph 5.12, the Supplier shall immediately inform the Customer if, in its opinion, an instruction infringes any Data Protection Law.
5. Rights of the Data Subject, reporting requirements and assistance
   1. If a Relevant Occurrence happens the Supplier shall notify the Customer within three calendar days and provide full co-operation in relation to any questions raised by the Customer about the Relevant Occurrence, and shall also provide any information or documents requested by the Customer, save that if the Relevant Occurrence is any actual or suspected Personal Data Breach concerning Customer Personal Data then the Supplier's obligation to notify shall be reduced to 6 hours.
   2. The Supplier shall provide the Customer with such co-operation, information and assistance, in a timely manner, as requested by the Customer (acting reasonably) from time to time.
6. Consequences of termination or expiry
   1. Following termination or expiry of this agreement, the Supplier shall continue to be bound by the provisions of this Schedule for so long as it is a Controller in respect of Customer Personal Data and for so long as it (or any Sub-Processor) Processes Customer Personal Data.

**Appendix: Data Protection Particulars**

1. Supplier's status as Controller or Processor and other particulars

**Drafting Notes**: Please pass this schedule to your Data Protection Officer. Please choose 1.1, 1.2 or 1.3 depending on whether the Supplier is a Controller, Processor, or both, and delete the other 2 options. There is a detailed explanatory note at the end of this schedule for further information on whether the Supplier will be a Controller or a Processor.

* 1. Subject to paragraph 2.2, the Supplier is a Processor in respect of Customer Personal Data.
  2. The Supplier is a Controller in respect of any Processing of Customer Personal Data by or on behalf of the Supplier.
  3. Subject to paragraph 2.2:
     1. The Supplier is a Controller in respect of the following Processing by it of Customer Personal Data: Processing relating to the provision of an IT helpdesk; and
     2. The Supplier is a Processor in respect of the following Processing by it of Customer Personal Data: Processing relating to the hosting of the Customer's pupil information management system*.*
  4. In relation to the termination or expiry of this agreement, the parties agree the following provisions regarding the return of Customer Personal Data to the Customer: Customer to complete

**Drafting Note**: The Supplier will usually need to return Customer Personal Data to the Customer in a secure way and so the practical arrangements for this should be set out here.

1. Special conditions

**Drafting Notes:**

Include any project specific requirements. Examples of what this might include:

* Specific information security requirements
* Requirement to comply with certain encryption standards. For example "The Supplier shall ensure that any Customer Personal Data Processed by or on behalf of it is encrypted at all times. The encryption used by the Supplier must meet with current standards including [FIPS 140-2 and FIPS 197]."
* Requirement to use multi-factor authentication. For example: "The Supplier shall ensure that multi-factor authentication is used at all times when Customer Personal Data is accessed by or on behalf of the Supplier and that Customer Personal Data cannot be accessed without using multi-factor authentication. The multi-factor authentication shall include [• a username, a password and at least one other credential that is generated at the time the person attempts access to the system through which they access Customer Personal Data]."
* Limiting access to Customer Personal Data to certain identified individuals at the Supplier's end.
* Specific security measures for data sharing.
* Requirement to carry out the Processing at a specific location such as the Customer's premises where only authorised staff can access Customer information.

1. Processor particulars
   1. This paragraph 3 to the Appendix only applies where the Supplier is acting as a Processor. It does not apply where the Supplier is acting as Controller.
   2. The following particulars are applicable to the Processing:

|  |  |
| --- | --- |
| **Subject matter of Processing** | The Provision of Services. |
| **Duration of Processing** | See paragraph 1.4 of this Appendix. |
| **Purpose of Processing** | Please complete  **Drafting Note**: In relation to purpose, something such as the following would be appropriate, assuming this accurately reflects the services provided: "To enable the Supplier to provide managed outsourced IT services to the Customer in accordance with this agreement." |
| **Nature of Processing** | Please complete  **Drafting Note**: The "nature" of the Processing should describe the operations the Supplier will perform on the Customer Personal Data 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." |
| **Types of Personal Data Processed** | Please complete |
| **Categories of Personal Data** | Please complete |

* 1. In accordance with paragraph 5.8, the following Sub-Processors are authorised by the Customer:

|  |  |
| --- | --- |
| **Name of Sub-Processor** | **Description of services provided** |
|  |  |
|  |  |
|  |  |

**Drafting Note:**

**Controllers and processors**

This note is intended to assist in determining whether the supplier is a controller, a processor, or both a controller and a processor.

As a starting point please see the following guidance from the ICO regarding controllers and processors [Controllers and processors | ICO](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/controllers-and-processors/). The ICO guidance explains the position generally, this note sets out how to apply the principles in relation to the provision of IT services.

The supplier's obligations are different depending on whether it is a controller or a processor. Under data protection law, controllers have more onerous compliance obligations than processors.

Whether the supplier is a controller, or a processor will depend on the nature of the services provided.

**Controllers**

A controller determines for what purposes personal data are processed, and the means. For example, an employer is a controller of the personal data it holds about its employees because it decides for what purpose the data is used for (e.g., to pay the employee, performance management etc) and the means by which it is processed, for example, the employer decides what types of personal data it needs to hold and who it needs to be shared with for the purposes.

If an IT supplier has discretion to make its own decisions when processing personal data, this may suggest it is acting as a controller. For example, when running a support desk, a supplier may often be a processor but factors which may suggest that the IT supplier is performing this function as a controller rather than a processor, include:

* The IT supplier has sole discretion to determine what personal data needs to be collected from the user to assess the level of support required, and how best to provide it (for example, remotely or in-person). The IT supplier may decide it needs to log only basic details about the caller (for example, name and telephone number) or it may need more extensive information (for example, work location, role, qualifications, and experience level of caller).
* The IT supplier may intend to use personal data for purposes ancillary to the primary support obligation (for example, to analyse trends in support requirements, or to generally improve its products or services).
* The support desk may not function correctly if the customer is able to dictate to the IT supplier what data is to be collected, how the data will be processed, and when it needs to be deleted.
* The IT supplier is given a high degree of autonomy to develop the IT support service in the way it sees best and provides tailored training and support to users based on users' needs and experience.

**Processors**

If an entity does not make key decisions around the purposes and means of processing personal data as part of their provision of services, but only processes data on the instructions of the other party, it is likely to be a processor.

A common example would be a web host, who hosts its customer's website (and website data) on its own servers. The host would not ordinarily be permitted to use any personal data stored as part of the website for its own purposes and would typically agree to only act on the instructions of its customer when dealing with that data. For example, the customer would tell its web host when to delete customer data from its systems.

**Controllers or processors**

A party to an IT contract does not need to act exclusively as a controller or a processor. For example, an IT supplier may act as a controller in relation to certain types of processing and a processor in relation to others. This is why the data protection schedule has an option for the supplier being both a controller and a processor. This is increasingly common for IT suppliers.

For example, an IT supplier may consider itself to be acting in the role of:

* A controller when:
  + operating its own help desk;
  + developing bespoke training for users;
  + using personal data for its own purposes, for example, contract administration and advertising and marketing its goods and services to its customers.
* A processor when:
  + hosting personal data contained in a pupil information management system;
  + processing personal data collected via a cloud computing application to perform a task instructed by the customer; and
  + accessing personal data held on a customer's IT infrastructure when providing support or maintenance services to that customer. For example, when accessing a dataset when attempting to replicate a technical error that the customer has reported.

IT suppliers may now struggle to convince their customer that they act as mere processors, especially as they move away from their more historical role of simply "maintaining" a system or mechanically processing data on the instructions of their customer. This is particularly the case where suppliers are putting themselves forward as having business process outsourcing expertise or are providing an overall technology "solution".

**Joint controllers**

In many cases where the supplier is a controller, the customer and the supplier will be independent controllers. Where two or more parties jointly determine the means and purposes of processing, they will be joint controllers. Generally, independent controllers share a pool of personal data which they use independently of one another usually for different and distinct purposes. As the name suggests, joint controllers make joint decisions about the data.

Joint controllers are required to:

* Decide who will carry out which controller obligation under data protection law.
* Have a transparent arrangement which sets out agreed roles and responsibilities for GDPR compliance in particular transparency obligations and individual rights (including rights relating to subject access requests, accuracy, and data minimisation).
* Communicate the essence of the arrangement to data subjects.

The draft data protection schedule (paragraph 2.4) contains some general wording around obligations under joint controllership, for example, by providing that the customer and supplier are each responsible for the data they process respectively but that the Customer will be responsible for responding to incidents such as data breaches. However, it may be appropriate to provide further detail. For example, if in practice the supplier does not have direct contact with data subjects, then it may be appropriate to make the customer responsible for providing both the customer's and the supplier's privacy notice to individuals.

If the supplier is a controller, then the parties will need to decide if the customer and supplier are acting as joint controllers or independent controllers for each of the services provided. In practice, it is often in both the customer's and the supplier's best interest for the relationship to be that of sole controllers rather than joint controllers, as the later comes with an additional compliance burden and makes it more likely that each could be liable for breaches caused by the other. The Schedule has therefore been drafted to provide that the parties are independent controllers unless the Appendix specifies, they are joint controllers.

Using the support desk example above:

* **Supplier as sole controller:** If the supplier has sole autonomy with regards to processing personal data in relation to the support desk, then this would point towards it being a sole controller.
* **Supplier as joint controller with the customer:** If the supplier and customer jointly decide on the use of personal data in relation to the support desk then this would point towards the parties being joint controllers. For example, if they worked together to decide the types of personal data that needed to be collected in order to run the support desk efficiently.
* **Supplier as processor:** If in practice, the supplier has little discretion with regards to processing personal data and does not use the data for its own purposes (for example, does not use the personal data to improve its own services) then it is more likely to be a processor. This is more likely to be the case if the personal data collected is always the same, and is limited in nature (e.g., limited to the name and job title of the person the support relates to). Having the discretion to decide what technical questions to ask (such as what the error message says or what operating system the call is using) does not make the supplier a processor as this type of information is not usually personal data.

1. Change Request Template Form

In accordance with the terms of this agreement, and in particular clause 19, if either party wishes to change the scope of the Services (including Customer requests for additional or varied Services), it shall submit details of the requested change to the other party in writing using the following template change request form:

|  |  |  |  |
| --- | --- | --- | --- |
| **Form:** | Change to the Scope of Services | **Date:** |  |
| **Change Title:** |  | **Change Number:** |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Requested by:** |  | **Role:** |  |
| **Presented to:** | Project Steering | **Role:** |  |

|  |
| --- |
| **Description of Change:** |
|  |
| **Reasons for Change:** |
|  |
| **Proposed Start Date of scope change:** |
|  |
| **Impact/Risk Assessment:** |
|  |
| **Impact of changing scope:** |
|  |
| **Impact of not changing scope:** |
|  |
| **Cost Assessment:** |
|  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Approvals** | | | | |
| Approved/Rejected by: | **Signature:** |  | | | |
|  | **Role:** |  | **Date:** |  | |

Signed for, and on behalf of Supplier\_Name (The Supplier):

|  |  |
| --- | --- |
| Name: | To be completed |
| Role: | Director |
| Signature: |  |
| Date: |  |

Signed for, and on behalf of Contracting\_Authority (The Contracting Authority):

|  |  |
| --- | --- |
| Name: | To be completed |
| Role: | Director |
| Signature: |  |
| Date: |  |

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**First Published Document**

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