



Wildwood
Wildwood Drive
Worcester
WR5 2QT

www.theoep.org.uk

The OEP Standard Contract Terms for the Purchase of Goods and Services

The Core Terms

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This document sets out the **Core Terms** that apply to contracts for the supply of goods and/or services to the **OEP**. They are based on the Cabinet Office short form terms and conditions.

This document should be read along with the **Order Form** and any **Special Terms** that apply to the **Contract**.

Words or phrases that appear in bold in these **Core Terms** are defined in the **Glossary** at the end of this document.

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1. How the Contract Works

- 1.1 Where the **Order Form** is issued in the form of a **Contract Details** document by the **OEP**, the **Contract** is created when both **Parties** have signed the **Contract Details**.
- 1.2 However, where the **Order Form** is issued in the form of a **Purchase Order** by the **OEP**:
- this an offer by the **OEP** to purchase the **Deliverables** subject to and in accordance with the terms and conditions of the **Contract**; and
 - the **Supplier** is deemed to accept that offer, and the **Contract** is created, when: (i) the **OEP** receives written confirmation of the **Supplier's** acceptance of the **Purchase Order** or (ii) the **Supplier** acts in a manner that is consistent with performing the **Contract**.
- 1.3 The **Supplier** warrants and represents that its tender and all statements made and documents submitted as part of the procurement of **Deliverables** are and remain true and accurate.

- 1.4 The **Supplier** acknowledges that (a) it is not being appointed as an exclusive provider of the **Deliverables** (or of any similar goods, services or deliverables) and (b) the **OEP** does not guarantee that any particular volume of **Deliverables** will be instructed from the **Supplier**.

2. What needs to be delivered

Clauses that apply to all Deliverables

- 2.1 The following terms apply to all **Contracts**.
- (a) The **Supplier** must provide **Deliverables**: (i) in accordance with the **Specification**; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using **Good Industry Practice**; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the **Contract**; (vi) on the dates agreed; and (vii) that comply with all law.
 - (b) The **Supplier** must provide **Deliverables** with a warranty of at least 90 days (or longer where the **Supplier** offers a longer warranty period to its customers) from **Delivery** against all obvious defects.

Clauses that apply to the supply of Goods

- 2.2 The following terms apply only where the **Contract** involves the supply of **Goods** by the **Supplier**.

Manufacture of Goods

- (a) All **Goods** delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the **Goods** must be assignable to the **OEP** on request and for free.

Ownership and risk in Goods

- (c) The **Supplier** transfers ownership of the **Goods** on completion of delivery (including off-loading and stacking) or payment for those **Goods**, whichever is earlier.
- (d) Risk in the **Goods** transfers to the **OEP** on delivery, but remains with the **Supplier** if the **OEP** notices damage following delivery and lets the **Supplier** know within three **Working Days** of delivery.
- (e) The **Supplier** warrants that it has full and unrestricted ownership of the **Goods** at the time of transfer of ownership.

Delivery of Goods

- (f) The **Supplier** must deliver the **Goods** on the date and to the specified location during the **OEP's** working hours.
- (g) The **Supplier** must provide suitable packaging for the **Goods** to reach the point of delivery safely and undamaged.

- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of **Goods**.
- (i) The **Supplier** must provide all tools, information and instructions the **OEP** needs to make use of the **Goods**.

Rejection of Goods and cancellation

- (j) The **Supplier** will notify the **OEP** of any request that **Goods** are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the **OEP** against the costs arising as a result of any such request.
- (k) The **OEP** can cancel any order or part order of **Goods** which has not been delivered. If the **OEP** gives less than 14 days' notice then it will pay the **Supplier's** reasonable and proven costs already incurred on the cancelled order as long as the **Supplier** takes all reasonable steps to minimise these costs.
- (l) The **Supplier** must at its own cost repair, replace, refund or substitute (at the **OEP's** option and request) any **Goods** that the **OEP** rejects because they don't conform with clause 2.2. If the **Supplier** doesn't do this it will pay the **OEP's** costs including repair or re-supply by a third party.
- (m) The **OEP** will not be liable for any actions, claims, costs and expenses incurred by the **Supplier** or any third party during delivery of the **Goods** unless and to the extent that it is caused by negligence or other wrongful act of the **OEP** or its employees, officers or agents. If the **OEP** suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the **Supplier** shall indemnify the **OEP** from and against any losses, charges, costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the **Supplier**, any **Subcontractor** or any of the **Supplier Staff**.

Clauses that apply to the supply of Services

- 2.3 The following terms apply only where the **Contract** involves the supply of **Services** by the **Supplier**.
- (a) Late delivery of the **Services** will be a default by the **Supplier** under the **Contract**.
 - (b) The **Supplier** must co-operate with the **OEP** and its third party suppliers on all aspects connected with the delivery of the **Services** and ensure that all **Subcontractors** and **Supplier Staff** comply with any reasonable instructions including any security requirements.
 - (c) The **OEP** must provide the **Supplier** with reasonable access to its premises at reasonable times for the purpose of supplying the **Services**, if this is relevant to their delivery.

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

3. Pricing and payments

How the Charges will be calculated

- 3.1 In exchange for the **Deliverables**, the **Supplier** shall be entitled to invoice the **OEP** for the **Charges** in the **Order Form**.
- 3.2 The **Supplier** shall only be entitled to claim for **Deliverables** that have been properly **Delivered** in accordance with the **Contract** to the reasonable satisfaction of the **OEP**.
- 3.3 Unless the **Order Form** expressly states otherwise, all **Charges**:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
 - (b) include all costs and expenses connected with the supply of **Deliverables**; and
 - (c) are fixed for the **Contract Duration**, meaning that no increase in the **Charges** can be made without the **OEP's** prior written agreement.

Fixed price charges

- 3.4 If the **Order Form** does not state that the **Charges** are to be calculated based on agreed rate(s) then the **Charges** shall be fixed price, meaning that the **Charges** set out in the **Order Form** will be the maximum payable by the **OEP** for the relevant **Deliverable(s)**.

Time rate-based charges

- 3.5 If the **Order Form** states the **Charges** are payable based on time spent by the **Supplier** in providing the **Deliverables** at agreed rate(s):
- (a) the applicable time rate(s) set out in the **Order Form** will be the maximum rates payable by the **OEP** for the relevant category of **Supplier Staff**;
 - (b) the **Supplier** shall only be entitled to claim for time actually and properly spent in providing the **Deliverables**;
 - (c) the amount of the **Charges** that the **Supplier** can invoice will be subject to any caps or limits set out in the **Order Form**; and
 - (d) unless the **Order Form** states otherwise:
 - (i) day rates are based on a 7.5 hour day; and
 - (ii) invoices shall be calculated in full days and part-days, for which a part-day is a half-hourly fraction of a 7.5 hour full day.

Volume rate-based charges

- 3.6 If the **Order Form** states the **Charges** are payable based on the volume of Deliverables provided by the **Supplier** at agreed item rate(s):
- (a) the applicable item rate(s) set out in the **Order Form** will be the maximum rates payable by the **OEP** for the relevant type of **Deliverable**; and
 - (b) the amount of the **Charges** that the **Supplier** can invoice will be subject to any caps or limits set out in the **Order Form**.

Expenses and disbursements

- 3.7 The **Supplier** may only claim payment for additional costs or expenses that it incurs in the supply of the **Deliverables** if the **Order Form** expressly states that they are entitled to do so, and:
- (a) the nature and amount of the relevant costs and expenses has been approved by the **OEP** in writing in advance of being incurred;
 - (b) the relevant costs and expenses have been reasonably and properly incurred by the **Supplier** in the supply of the **Deliverables**;
 - (c) travel and subsistence expenses do not exceed the following maximum rates and rules unless otherwise stated in the **Order Form**:
 - (i) Car mileage: 25p/mile if travel by public transport was a reasonably feasible alternative for the journey
45p/mile if travel by public transport was not a reasonably feasible alternative for the journey
 - (ii) Pedal cycle: 20p/mile
 - (iii) Trains, buses, ferries: Standard class only, and the ticket and route offering best value for money

- (iv) Air travel: Not permitted unless written prior approval by the **OEP**
- (v) Taxis: Only if there are no reasonable public transport or pedestrian alternatives; or if there is a risk to the traveller's safety; or if the traveller has mobility needs requiring use of a taxi.
- (vi) Car parking, congestion charges and tolls: Reimbursable if necessarily incurred. Alternative means of travel to avoid charges and tolls should be used whenever reasonable.
- (vii) Hotels & subsistence: Not permitted unless written prior approval by the **OEP**

The **OEP** may amend the rates and/or rules above at any time during the **Contract Duration** on giving prior written notice to the **Supplier**.

- (d) the relevant costs and expenses are recharged as incurred by the **Supplier** without any mark-up or administration fees applied by the **Supplier** or their **Sub-contractors**; and
- (e) the aggregate total of additional costs and expenses does not exceed any maximum cap or limit on these that is set out in the **Order Form**.

When the Supplier can issue invoices

Invoicing for Goods

- 3.8 If the **Deliverables** are **Goods**, the **Supplier** shall be entitled to invoice the **OEP** for the relevant **Charges**:
- (a) on completed delivery of the **Goods**; or
 - (b) if the **Order Form** states the **Charges** include pre-payment(s) prior to delivery of the **Goods**, on the relevant pre-payment date(s) subject to any associated conditions stated in the **Order Form** being fulfilled.

Invoicing for Services

- 3.9 If the **Deliverables** are **Services**, the **Supplier** shall be entitled to invoice the **OEP** for the relevant **Charges**:
- (a) on the date that the **OEP** confirms to the **Supplier** in writing that the supply of the **Deliverables** has been completed; or
 - (b) if the **Charges** are time rate-based, at such frequency as is set out in the **Order Form**.
- 3.10 If the **Order Form** states the **Charges** are payable on the basis of the **Supplier** achieving certain milestones the **Supplier** shall be entitled to invoice the **OEP** for each milestone payment set out in the **Order Form** on the date that the **OEP** confirms to the **Supplier** in writing that the relevant milestone has been achieved.

Invoicing by the Supplier

- 3.11 The **Supplier** shall raise invoices promptly and in any event within 90 days from when the relevant **Charges** are due.
- 3.12 The **OEP** will pay the Supplier the **Charges** within 30 days of receipt by the **OEP** of a valid, undisputed invoice, in cleared funds to the **Supplier's** account stated in the **Order Form**.
- 3.13 A **Supplier** invoice is only valid if it:
- (a) clearly identifies the **Supplier** and includes the following details:
 - a valid **Purchase Order Number**;
 - the contract name and contract number (if applicable);
 - the **OEP's** contact person for the **Contract**;
 - a detailed breakdown of **Deliverables** which have been delivered, including the delivery date and (if applicable) identification of the **Milestone(s)** completed;
 - the amount of payment requested, in pounds sterling (GBP); and
 - the **Supplier's** bank account details; and
 - (b) is submitted to the **OEP's** Finance function by email to finance@theoep.org.uk
- 3.14 The **Supplier** shall provide such additional information and evidence as the **OEP** may request in relation to any proposed **Charges** (including, for example, copies of delivery notes or receipts relating to the relevant Deliverables, or copies of timesheets or expense receipts).
- 3.15 If there is a dispute between the **Parties** as to the amount invoiced the **OEP** shall pay the undisputed amount. The **Supplier** shall not suspend the provision of the **Deliverables** unless the Supplier is entitled to terminate the **Contract** for a failure to pay undisputed sums in accordance with clause 9.5. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 31.
- 3.16 The **OEP** may retain or set-off payment of any amount owed to it by the **Supplier** if notice and reasons are provided. The **Supplier** may not retain or set-off payment of any amount owed to it by the **OEP** without the **OEP's** prior written consent.
- 3.17 All payments made by the **OEP** to the **Supplier** will be in pounds sterling (GBP). The **OEP** will not be liable for any fees or charges incurred by the **Supplier** for receiving payment in pounds sterling (GBP).

4. Failures caused by the OEP

- 4.1 If Supplier fails to comply with the **Contract** as a result of an **OEP Cause**:

- (a) the **OEP** cannot terminate the **Contract** under clause 9.4 as a direct result of that failure;
- (b) the **Supplier** is entitled to additional time reasonably needed to deliver the **Deliverables**; and
- (c) the **Supplier** cannot suspend the ongoing supply of **Deliverables**.

4.2 Clause 4.1 only applies if the **Supplier**:

- (a) gives notice to the **OEP** within 10 **Working Days** of becoming aware of an **OEP Cause**;
- (b) demonstrates that the failure happened because of the **OEP Cause** only; and
- (c) has mitigated the impact of the **OEP Cause** as much as is reasonably possible.

5. Record keeping and reporting

Reporting on progress and audits

- 5.1 The **Supplier** must ensure that suitably qualified representatives attend progress meetings with the **OEP** and provide progress reports when specified in the **Order Form**.
- 5.2 The **Supplier** must keep and maintain full and accurate records and accounts on everything to do with the **Contract** for seven years after the date of expiry or termination of the **Contract**.
- 5.3 The **Supplier** must allow any auditor appointed by the **OEP** access to their premises to verify all contract accounts and records of everything to do with the **Contract** and provide copies for the audit.
- 5.4 The **Supplier** must provide information to the auditor and reasonable co-operation at their request.

Issues affecting provision of the Deliverables

- 5.5 If the **Supplier** is not providing any of the **Deliverables**, or is unable to provide them, it must immediately:
 - (a) tell the **OEP** and give reasons;
 - (b) propose corrective action; and
 - (c) provide a deadline for completing the corrective action.
- 5.6 If the **OEP**, acting reasonably, is concerned as to the financial stability of the **Supplier** such that it may impact on the continued performance of the **Contract** then the **OEP** may:
 - (a) require that the **Supplier** provide to the **OEP** (for its approval) a plan setting out how the **Supplier** will ensure continued performance of the **Contract** and the **Supplier** will make changes to such plan as reasonably required by the

OEP and once it is agreed then the **Supplier** shall act in accordance with such plan and report to the **OEP** on demand; and

- (b) if the **Supplier** fails to provide a plan or fails to agree any changes which are requested by the **OEP** or fails to implement or provide updates on progress with the plan, terminate the **Contract** immediately for material breach (or on such date as the **OEP** notifies).

6. Supplier Staff

- 6.1 The **Supplier Staff** involved in the performance of the **Contract** must:
 - (a) be appropriately trained and qualified, and have suitable experience, expertise and seniority for their role;
 - (b) be vetted using **Good Industry Practice** and in accordance with any staff vetting instructions issued by the **OEP** in the **Order Form**;
 - (c) act in a professional and appropriate manner; and
 - (d) comply with all conduct requirements when on the **OEP's** premises.
- 6.2 Where the **OEP** decides one of the **Supplier Staff** is not suitable to work on the **Contract**, the **Supplier** must replace them with a suitably qualified alternative.
- 6.3 If requested, the **Supplier** must replace any person whose acts or omissions have caused the **Supplier** to breach any clause of this Contract.
- 6.4 The **Supplier** must provide a list of **Supplier Staff** needing to access the **OEP's** premises and say why access is required.
- 6.5 The **Supplier** indemnifies the **OEP** against all claims brought by any person employed by the **Supplier** or their **Subcontractor** caused by an act or omission of the **Supplier**, any **Subcontractor** or any **Supplier Staff**.
- 6.6 The **Supplier** shall use those **Key Personnel** stated in the **Order Form** (if any) to provide the **Deliverables** and shall not remove or replace any of them unless:
 - (a) requested to do so by the **OEP** (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the **Supplier** or any **Subcontractor** is terminated for material breach of contract by the employee.

7. Rights, protections and insurances

- 7.1 The Supplier warrants and represents that:
 - (a) it has full capacity and authority to enter into and to perform the **Contract**;
 - (b) the **Contract** is executed by its authorised representative;

- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the **Contract**;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the **Contract**;
- (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the **Contract**; and
- (g) it is not impacted by an **Insolvency Event**.

7.2 The warranties and representations in clause 7.1 are repeated each time the Supplier provides **Deliverables** under the **Contract**.

7.3 The **Supplier** indemnifies the **OEP** against each of the following:

- (a) wilful misconduct of the **Supplier**, any of its **Subcontractors** and/or **Supplier Staff** that impacts the **Contract**;
- (b) non-payment by the **Supplier** of any tax or National Insurance; and
- (c) any costs resulting from any default by the **Supplier** relating to any applicable law to do with the **Contract**.

7.4 If the **Supplier** becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the **OEP**.

7.5 All third party warranties and indemnities covering the **Deliverables** must be assigned for the **OEP's** benefit by the **Supplier**.

7.6 The **Supplier**, its **Subcontractors** and **Supplier Staff** shall comply with applicable **OEP** policies, standards and procedures when providing the **Deliverables**, as long as copies of the relevant policies, standard and procedures have been made available to the **Supplier** in advance.

Supplier's insurances

7.6 The **Supplier** shall have in place throughout the **Contract Duration** (and for at least 12 months after the **Contract Duration**) adequate insurance cover, taking into account the nature and extent of its obligations under the **Contract** and any compulsory statutory requirements.

7.7. As a minimum, the **Supplier** will ensure that it has in place insurances that comply with the minimum insurance requirements set out below and any other specific requirements set out in the **Order Form**.

- (a) If the total value of the **Charges** that are payable to the **Supplier** under the **Contract** is £5,000 or less (excluding VAT), the **Supplier** must ensure that it has in place:
 - (i) professional indemnity insurance with a minimum limit of £500,000 (where the **Contract** involves the supply of **Services**);

- (ii) product liability insurance with a minimum limit of £500,000 (where the **Contract** involves the supply of **Goods**); and
 - (iii) public liability insurance with a minimum limit of £1,000,000.
- (b) If the total value of the **Charges** that are payable to the **Supplier** under the **Contract** is greater than £5,000 but not more than £50,000 (excluding VAT), the **Supplier** must ensure that it has in place:
 - (i) professional indemnity insurance with a minimum limit of £1,000,000 (where the **Contract** involves the supply of **Services**);
 - (ii) product liability insurance with a minimum limit of £1,000,000 (where the **Contract** involves the supply of **Goods**); and
 - (iii) public liability insurance with a minimum limit of £1,000,000.
- (c) If the total value of the **Charges** that are payable to the **Supplier** under the **Contract** is greater than £50,000 (excluding VAT), the **Supplier** must ensure that it has in place:
 - (i) professional indemnity insurance with a minimum limit of £5,000,000 (where the **Contract** involves the supply of **Services**);
 - (ii) product liability insurance with a minimum limit of £5,000,000 (where the **Contract** involves the supply of **Goods**); and
 - (iii) public liability insurance with a minimum limit of £5,000,000.

8. Intellectual Property Rights (IPR)

Ownership and rights to use IPR

- 8.1 Each **Party** keeps ownership of its own **Existing IPR**. The **Supplier** gives the **OEP** a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the **Supplier's Existing IPR** to enable it and its sublicensees to both:
- (a) receive and use the **Deliverables**; and
 - (b) use the **New IPR**.
- 8.2 Any **New IPR** created under the **Contract** is owned by the **OEP**. The **OEP** gives the **Supplier** a licence to use any **Existing IPR** and any **New IPR** for the purpose of fulfilling its obligations under the **Contract**. The **Supplier** may use the **OEP's Existing IPR** or **New IPR** for other purposes if the **OEP** has granted a specific licence in the **Order Form** or by a separate licence agreement or has released the IPR under the Open Government Licence, and subject to the **Supplier** complying with the terms of the licence.
- 8.3 Where a **Party** acquires ownership of intellectual property rights incorrectly under this **Contract** it must do everything reasonably necessary to complete a transfer assigning them in writing to the other **Party** on request and at its own cost.

- 8.4 Neither **Party** has the right to use the other **Party's** intellectual property rights, including any use of the other **Party's** names, logos or trademarks, except as provided in clause 8 or otherwise agreed in writing.

Infringement of a third party's intellectual property

- 8.5 If any claim is made against the **OEP** for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the **Supplier** indemnifies the **OEP** against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the **IPR Claim**.
- 8.6 If an **IPR Claim** is made or anticipated the **Supplier** must at its own expense and the **OEP's** sole option, either:
- (a) obtain for the **OEP** the rights in clauses 8.1 and 8.2 without infringing any third party intellectual property rights; or
 - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the **Deliverables**.

9. Ending the Contract

- 9.1 The **Contract** takes effect on the date it is created as described in clause 1.1 or 1.2 (as applicable) and continues for the **Contract Duration**.
- 9.2 The **OEP** can extend the **Contract Duration** where set out in the **Order Form**, in accordance with the terms in the **Order Form**. The **OEP** may also extend the **Contract Duration** at its sole discretion at any time on giving not less than 5 **Working Days'** notice to the **Supplier**.

When the OEP can end the Contract

Ending the Contract without a reason

- 9.3 The **OEP** has the right to terminate the **Contract** at any time without reason or liability by giving the **Supplier** not less than 5 **Working Days'** written notice.

Ending the Contract due to an event

- 9.4 If any of the following events happen, the **OEP** has the right to immediately terminate the **Contract** by issuing a termination notice in writing to the **Supplier**:
- (a) there's a **Supplier Insolvency Event**;
 - (b) the **Supplier** repeatedly breaches the **Contract** in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the **Contract**;
 - (c) the **Supplier** is in material breach of any obligation which is not capable of remedy;

- (d) the **Supplier** is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the **Supplier** receiving notice specifying the breach and requiring it to be remedied;
- (e) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the **Supplier** which isn't pre-approved by the **OEP** in writing;
- (f) the **OEP** discovers that the **Supplier** was in one of the situations in 57(1) or 57(2) of the **Regulations** at the time the **Contract** was awarded;
- (g) the **Supplier** (or its affiliates), the **Supplier Staff** and/or any **Subcontractor** embarrass or bring the **OEP** into disrepute or diminish the public trust in it; and/or
- (h) any of the events in 73(1) (a) to (c) of the **Regulations** (substantial modification, exclusion of the **Supplier**, procurement infringement) happen.

When the Supplier can end the Contract

9.5 The Supplier can:

- (a) issue a reminder notice if the **OEP** does not pay an undisputed invoice on time; and
- (b) terminate the **Contract** if the **OEP** fails to pay an undisputed invoiced sum due and worth over 10% of the total **Contract** value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

Suspending the Contract

9.6 Where the **OEP** has the right to terminate the **Contract** it can terminate or suspend (for any period), all or part of it. If the **OEP** suspends the **Contract** it can provide the **Deliverables** itself or buy them from a third party.

9.7 The **OEP** can still use other rights available, or subsequently available, to it if it acts on its rights under clause 9.6.

Partially ending or partially suspending the Contract

9.8 The **OEP** can only partially terminate or partially suspend the **Contract** if the **OEP** considers that the remaining parts of it can still be used to effectively deliver the intended purpose.

9.9 The **Parties** must agree (in accordance with clause 21) any necessary variation required by clause 9.8, but the **Supplier** may not either:

- (a) reject the variation; or
- (b) increase the **Charges** or the rates (if used) on which the **Charges** are based.

What happens when the Contract ends

9.10 In all circumstances where the **Contract** is terminated or expires, all of the following apply:

- (a) the **OEP's** payment obligations under the terminated **Contract** stop immediately;
- (b) accumulated rights of the **Parties** are not affected;
- (c) the **Supplier** must promptly delete or return the **OEP Data** except where required to retain copies by law;
- (d) the **Supplier** must promptly return any of the **OEP's** property provided under the **Contract**;
- (e) the **Supplier** must, at no cost to the **OEP**, give all reasonable assistance to the **OEP** and any incoming supplier and co-operate fully in the handover and re-procurement; and
- (e) the following clauses survive the termination of the **Contract**: 2.2(j), 2.2(m), 3.12, 5.2, 5.3, 5.4, 7, 8, 9.10, 9.11, 9.12, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 26, 27, 30, 31 and 32 and any other provisions of this **Contract** which are expressly or by implication intended to continue.

9.11 If the **OEP** terminates the **Contract** under clause 9.4 (other than under 9.4(h)), the **Supplier** is responsible for the **OEP's** reasonable costs of procuring replacement deliverables for the rest of the term of the **Contract**.

9.12 If the **Supplier** terminates the **Contract** under clause 9.5 or if the **Contract** expires on the **Expiry Date** the **OEP** shall pay all outstanding **Charges** due to the **Supplier** as at the date of termination in accordance with clause 3.12.

10. How much the Parties can be held responsible for

10.1 The **Supplier's** total aggregate liability under or in connection with the **Contract** (whether in tort, contract or otherwise) is no more than the greater of:

- (a) 125% of the **Charges** paid or payable to the **Supplier**; and
- (b) the level of the minimum required insurances that the **Supplier** is required to maintain in respect of the relevant type of liability, as described in clause 7.7.

10.2 The **OEP's** total aggregate liability under or in connection with the **Contract** (whether in tort, contract or otherwise) is no more than 125% of the **Charges** paid or payable to the **Supplier**.

10.3 No **Party** is liable to the other for:

- (a) any indirect losses; or
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

10.4 In spite of clauses 10.1 and 10.2, neither **Party** limits or excludes any of the following:

- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

- (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
 - (c) any liability that cannot be excluded or limited by law.
- 10.5 In spite of clause 10.1, the **Supplier** does not limit or exclude its liability for any indemnity given under clauses 2.2(j), 2.2(m), 6.5, 7.3, 8.5, 11.10(e) or 27.2(b) or under any indemnity given in any **Special Terms**.
- 10.6 Each **Party** must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the **Contract**, including any indemnities.
- 10.7 If more than one **Supplier** is party to the **Contract** or the Supplier is a partnership, each **Supplier** party or partner is fully responsible for both their own liabilities and the liabilities of the other **Supplier** parties or partners.

11. Protection of Personal Data and OEP Data

Processing of Personal Data

- 11.1 Each **Party** will comply with its obligations under the **Data Protection Legislation** when processing any **Personal Data** in connection with the **Contract**.
- 11.2 Where the **Supplier** processes any **Personal Data** on behalf of the **OEP**, the Supplier will also comply with the relevant **Special Terms** in connection with such processing.
- 11.3 The **Supplier** shall:
- (a) promptly provide the **OEP** with all reasonable assistance in relation to any **Party's** obligations under **Data Protection Legislation**, including, for example, in connection with any data privacy impact assessments, complaints, communications or requests related to the **Deliverables** and/or this **Contract**; and
 - (b) promptly notify the **OEP** of any complaint, communication or request related to the **Deliverables** and/or this **Contract** that may be received by the **Supplier**, any **Subcontractors** or any **Supplier Staff**; and
 - (c) notify the **OEP** immediately if it suspects the **OEP's** instructions relating to any **Deliverables** and/or this **Contract** breach the **Data Protection Legislation**.

OEP Data

- 11.4 The **Supplier** must not remove any ownership or security notices in or relating to the **OEP Data**.
- 11.5 The **Supplier** must make accessible back-ups of all **OEP Data**, stored in an agreed off-site location and send the **OEP** copies every six **Months**.

- 11.6 The **Supplier** must ensure that any **Supplier** system holding any **OEP Data**, including back-up data, is a secure system that complies with the security requirements specified by the **OEP**.
- 11.7 If at any time the **Supplier** suspects or has reason to believe that the **OEP Data** provided under the **Contract** is corrupted, lost or sufficiently degraded, then the **Supplier** must notify the **OEP** and immediately suggest remedial action.
- 11.8 If the **OEP Data** is corrupted, lost or sufficiently degraded so as to be unusable the **OEP** may either or both:
- (a) tell the **Supplier** to restore or get restored **OEP Data** as soon as practical but no later than five **Working Days** from the date that the **OEP** receives notice, or the **Supplier** finds out about the issue, whichever is earlier;
 - (b) restore the **OEP Data** itself or using a third party.
- 11.9 The **Supplier** must pay each **Party's** reasonable costs of complying with clause 11.8 unless the **OEP** is at fault.
- 11.10 The **Supplier**:
- (a) must provide the **OEP** with all **OEP Data** in an agreed open format within 10 **Working Days** of a written request;
 - (b) must have documented processes to guarantee prompt availability of **OEP Data** if the **Supplier** stops trading;
 - (c) must securely destroy all **Storage Media** that has held **OEP Data** at the end of life of that media using **Good Industry Practice**;
 - (d) securely erase all **OEP Data** and any copies it holds when asked to do so by the **OEP** unless required by law to retain it; and
 - (e) indemnifies the **OEP** against any and all **Losses** incurred if the **Supplier** breaches clause 11, any **Special Terms** relating to the processing of **Personal Data** or any **Data Protection Legislation**.
- 11.11 When handling **OEP Data** the **Supplier** shall fully comply with the requirements of the Government Security Classifications Policy (GSCP) (www.gov.uk/government/publications/government-security-classifications), including:
- (a) following the minimum baseline security requirements and behaviours for OFFICIAL, OFFICIAL information marked OFFICIAL-SENSITIVE, SECRET or TOP SECRET outlined in the GSCP and any additional security requirements or behaviours as set out by the **OEP**;
 - (b) ensuring appropriate protective security controls are in place in line with the GSCP for the protection against compromise of **OEP Data** held by the **Supplier**;
 - (c) applying the appropriate security marking to all information and documents created by the **Supplier** in the delivery of the **Contract**; and

- (d) should the **Supplier** subcontract any part of the contract the **Supplier** shall ensure that the **Subcontractor** shall comply with the GSCP with the same conditions as required of the **Supplier**.

12. What must be kept confidential

Confidentiality obligations

12.1 Each **Party** must:

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

General rights of disclosure

12.2 In spite of clause 12.1, a **Party** may disclose **Confidential Information** which it receives from the disclosing **Party** in any of the following instances:

- (a) where disclosure is required by applicable law or by a court with the relevant jurisdiction if the recipient **Party** notifies the disclosing **Party** of the full circumstances, the affected **Confidential Information** and extent of the disclosure;
- (b) if the recipient **Party** already had the information without obligation of confidentiality before it was disclosed by the disclosing **Party**;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the disclosing **Party's Confidential Information**;
- (f) to its auditors or for the purposes of regulatory requirements;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis;
- (h) to the Serious Fraud Office where the recipient **Party** has reasonable grounds to believe that the disclosing **Party** is involved in activity that may be a criminal offence under the Bribery Act 2010.

Supplier rights of disclosure

12.3 The **Supplier** may disclose **Confidential Information** on a confidential basis to **Approved Subcontractors** and **Supplier Staff** on a need-to-know basis to allow the **Supplier** to meet its obligations under the **Contract**. The **Approved Subcontractors** and **Supplier Staff** must enter into a direct confidentiality agreement with the **OEP** at its request.

OEP rights of disclosure

- 12.4 The **OEP** may disclose **Confidential Information** in any of the following cases:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the **OEP**;
 - (b) on a confidential basis to any other **Central Government Body**, any successor body to a **Central Government Body** or any company that the **OEP** transfers or proposes to transfer all or any part of its business to;
 - (c) if the **OEP** (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by Parliament;
 - (e) under clauses 20.8 and 13.
- 12.5 For the purposes of clauses 12.2 to 12.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 12.
- 12.6 Information which is disclosed by the **OEP** pursuant to clause 13 is not **Confidential Information**.

Controls on press announcements and publicity

- 12.7 The **Supplier** must not:
- (a) make any press announcement or publicise the **Contract** or any part of it in any way, without the prior written consent of the **OEP** and must take all reasonable steps to ensure that **Subcontractors** and **Supplier Staff** do not either;
 - (b) publish alone or in conjunction with any other person any articles or results arising from the **Deliverables**, or other material relating to the **Deliverables** nor impart any information regarding the **Deliverables** without the prior written consent of the **OEP**;
 - (c) communicate with representatives of the press, television, radio or other communications media on any matter concerning the **Contract** or the **Deliverables** without the prior written consent of the **OEP**; or
 - (d) represent itself to any third party as an advisor of the **OEP** without the prior written consent of the **OEP** unless part of the agreed scope of the relevant **Deliverables**.
- 12.8 Where consent to publish material related to the **Contract** or the **Deliverables** is granted by the **OEP**, the **Supplier** shall acknowledge the **OEP** in such material and any related publicity and shall ensure links or references are provided to original **OEP** material where appropriate.

13. Dealing with Requests for Information

- 13.1 The **Supplier** must tell the **OEP** within 48 hours if it receives a **Request For Information** relating in any way to the **Contract**.
- 13.2 Within the required timescales the **Supplier** must give the **OEP** full co-operation and information needed so the **OEP** can:
- (a) publish the **Transparency Information**;
 - (b) comply with any Freedom of Information Act (FOIA) request;
 - (c) comply with any Environmental Information Regulations (EIR) request.
- 13.3 The **OEP** may talk to the **Supplier** to help it decide whether to publish information under clause 13. However, the extent, content and format of the disclosure is the **OEP's** decision, which does not need to be reasonable.

14. Invalid parts of the Contract

If any part of the **Contract** is prohibited by law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that **Contract** as much as required and rendered ineffective as far as possible without affecting the rest of the **Contract**, whether it's valid or enforceable.

15. No other terms apply

The provisions incorporated into the **Contract** are the entire agreement between the **Parties**. The **Contract** replaces all previous statements and agreements whether written or oral. No other provisions apply.

16. Other people's rights in a contract

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

17. Circumstances beyond a Party's control

- 17.1 Any **Party** affected by a **Force Majeure Event** is excused from performing its obligations under the **Contract** while the inability to perform continues, if it both:
- (a) provides written notice to the other **Party**; and
 - (b) uses all reasonable measures practical to reduce the impact of the **Force Majeure Event**.

- 17.2 Either **Party** can partially or fully terminate the **Contract** if the provision of the **Deliverables** is materially affected by a **Force Majeure Event** which lasts for 60 days continuously.
- 17.3 Where a **Party** terminates under clause 17.2:
- (a) each **Party** must cover its own losses; and
 - (b) clause 9.10 applies.

18. Relationships created by the Contract

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

19. Giving up Contract rights

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

20. Transferring responsibilities

Assigning and novating the contract

- 20.1 The **Supplier** cannot assign the **Contract** without the **OEP's** written consent.
- 20.2 The **OEP** can assign, novate or transfer the **Contract** or any part of it to any **Crown Body**, public or private sector body which performs some or all of the functions of the **OEP**.
- 20.3 When the **OEP** uses its rights under clause 20.2 the **Supplier** must (at no cost to the **OEP**) enter into a novation agreement in the form that the **OEP** specifies.

Subcontracting to others

- 20.4 The **Supplier** cannot subcontract all or any part of the provision of the **Deliverables** or the **Contract** without the **OEP's** prior written consent (which consent will not be unreasonably withheld or delayed). Without limitation, it shall be reasonable for the **OEP** to withhold its consent to a proposed subcontract or **Subcontractor** if it considers that:
- (a) the proposed subcontracting in the **Contract** or the appointment of a proposed **Subcontractor** may prejudice the supply of the **Deliverables** or may be contrary to the interests of the **OEP**;
 - (b) the proposed **Subcontractor** is unreliable and/or has not provided reasonable services and/or goods to its other customers; and/or
 - (c) the proposed **Subcontractor** employs unfit persons.

- 20.5 If the **OEP** asks the **Supplier** for details about any proposed **Subcontractor**, the **Supplier** must provide the requested details including:
- (a) their name;
 - (b) the scope of their appointment; and
 - (c) the duration of their appointment.
- 20.6 The **Supplier** must exercise due skill and care when it selects and appoints **Subcontractors** to ensure that the **Supplier** is able to:
- (a) manage **Subcontractors** in accordance with **Good Industry Practice**;
 - (b) comply with its obligations under this **Contract**; and
 - (c) assign, novate or transfer its rights and/or obligations under the relevant subcontract that relate exclusively to this **Contract** to the **OEP** or its nominee, if the **OEP** requires the **Supplier** to do so.
- 20.7 The **Supplier** remains responsible for all acts and omissions of its **Subcontractors** and the **Supplier Staff** as if they were its own.
- 20.8 The **Supplier** must ensure that all **Subcontractors** are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the **OEP** can publish the details of the late payment or non-payment.

21. Changing the Contract

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

22. How to communicate about the Contract

- 22.1 All notices under the **Contract** must be in writing and are considered effective on the **Working Day** of delivery as long as they are delivered before 5:00pm on a **Working Day**. Otherwise the notice is effective on the next **Working Day**. An email is effective when sent unless an error message is received.
- 23.2 Notices to the **OEP** must be sent to the email address of the relevant **OEP** contact person for the **Contract** as set out in the **Order Form**, with a copy to procurement@theoep.org.uk.
- 22.3 Notices to the **Supplier** must be sent to the email address of the relevant **Supplier** contact person for the **Contract** as set out in the **Order Form**.
- 22.4 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

23. Social responsibility

- 23.1 The **Supplier** shall observe the following principles in its business throughout the **Contract Duration**:
- (a) the promotion of good practices which foster and promote respect for human rights;
 - (b) the avoidance of complicity in human rights abuses;
 - (c) respecting the freedom of persons to join unions or the right of workers to engage in collective bargaining, subject to legal requirements existing under applicable law;
 - (d) the elimination of all types or sorts of forced and compulsory labour;
 - (e) the avoidance of any type of child labour, including through observing minimum contracting ages in accordance with applicable law;
 - (f) the elimination of all discriminatory practices with respect to employment and occupation;
 - (g) the pursuit of sustainability and sustainable development, including through excluding or limiting activities which may negatively impact the environment; and
 - (h) the prevention of corruption, including extortion and bribery.
- 23.2 The **Supplier** shall comply with all applicable laws in force which are linked to the principles set out in clause 23.1.
- 23.3 The **Supplier** shall notify the **OEP** with regard to any situation in which a breach of the principles set out in clause 23.1 is identified by the **Supplier** and to provide a plan to remedy any such a breach. The **Supplier** shall also provide a plan to remedy any breach of these principles that is identified by the **OEP**. If any such corrective plans are not provided or implemented to the reasonable satisfaction of the **OEP**, the **OEP** reserves the right to terminate this **Contract** under clause 9.4 without any liability by the **OEP** to the **Supplier**.
- 23.4 The **Supplier** must ensure that its **Subcontractors** provide commitments to the **Supplier** that are substantially the same as those set out in this clause.
- 23.5 The **Supplier** will, at all times during the **Contract Duration**, permit the **OEP** to audit or review the **Supplier's** compliance with its duties under this clause.
- 23.6 The **Supplier** must, in connection with provision of the **Deliverables**, use reasonable endeavours to:
- (a) comply and procure that its **Subcontractors** comply with the Supplier Code of Conduct (www.gov.uk/government/publications/supplier-code-of-conduct) and such other corporate social responsibility requirements as the **OEP** may notify to the **Supplier** from time to time; and

- (b) meet the Government Buying Standards (www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs) applicable to the **Deliverables**.

24. Equality and diversity and human rights

- 24.1 The **Supplier** must follow all applicable equality law when they perform their obligations under the **Contract**, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or any other protected characteristics;
 - (b) any other requirements and instructions which the **OEP** reasonably imposes related to equality law.
- 24.2 The **Supplier** must take all necessary steps, and inform the **OEP** of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the **Contract**.
- 24.3 The **Supplier** must, in connection with provision of the **Deliverables**, use reasonable endeavours to support the **OEP** in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010.

25. Environment and sustainability

- 25.1 The **Supplier** shall ensure that the **Deliverables** are designed, sourced and delivered in a manner which is environmentally and socially responsible.

Complying with environmental laws and regulations

- 25.2 The **Supplier** must follow all applicable environmental law when they perform their obligations under the Contract
- 25.3 The **Supplier** shall:
- (a) ensure that all required permits, licences or exemptions applicable to environment-related aspects of performing the **Contract** are held for the duration of the relevant activities under the **Contract**;
 - (b) be responsible for ensuring that any waste generated by the **Supplier** as a consequence of this **Contract** and sent for recycling, disposal or other recovery is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the treatment or disposal of waste complies with the law;
 - (c) ensure that it and any third parties used to undertake recycling, disposal or other recovery of waste as a consequence of this **Contract** do so in a legally compliant way and can demonstrate that reasonable checks are undertaken

to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal;

- (d) provide copies of permits, licences, exemptions or any other related information applicable to the **Contract** to the **OEP** upon request, to enable the **OEP** to verify legal compliance; and
- (e) inform the **OEP** within one **Working Day** in the event that a permit, licence or exemption is revoked, with explanation of the reasons for the revocation.

25.4 The **Supplier** shall immediately inform the **OEP**, and the police and relevant regulator as appropriate, of any suspected or actual breach of environmental laws or regulations, or other serious environmental incidents, either directly or indirectly related to the **Contract**. The **Supplier** shall cooperate fully with any investigation.

Complying with an environmental management system

25.5 The **Supplier** shall adopt and comply with an environmental/sustainability policy that as a minimum requires it to identify, avoid, reduce and mitigate relevant environmental impacts and improve sustainability in its business operations, and to achieve continuous improvement in its environmental performance.

25.6 The **Supplier** shall adopt an Environment Management System (EMS) certified to ISO14001 or equivalent and shall comply with and maintain certification throughout the Contract Duration.

25.7 If the **Supplier** is a small business or micro business it shall comply with clause 25.6 if reasonably practicable. The terms "small business" and "micro business" have the meanings given to them in the Small Business, Enterprise and Employment Act 2015.

25.8 The **Supplier** shall provide a copy of its environmental policy and information about its environmental management system to the **OEP** upon request.

25.9 The **Supplier** shall provide details of its scope 1 and 2 greenhouse gas (GHG) emissions, and scope 3 emissions where available, on an annual basis, proportionate to the **Services** provided to the **OEP** over that same period.

Avoiding negative environmental impacts and supporting sustainability

25.10 In delivering the **Contract** the **Supplier** shall comply with the relevant environmental and sustainability requirements of (a) the **OEP's** Sustainability Policy as provided to the **Supplier**, (b) the **Contract**, and (c) as may be reasonably required by the **OEP** as communicated to the **Supplier** during the **Contract Duration**.

25.11 Notwithstanding clause 25.9 the **Supplier** shall throughout its performance of the **Contract** endeavour to proactively identify and implement solutions to avoid or reduce negative environmental impacts and improve sustainability in the delivery of the **Contract**.

25.12 In delivering the **Contract** the **Supplier** shall as a minimum implement the following requirements where relevant to the **Deliverables**, as far as is reasonably practicable, and to the reasonable satisfaction of the **OEP**:

Resources

- (a) minimise the consumption of resources and use them efficiently (including materials, water and energy), working towards a circular economy including designing out waste and non-renewable resources, and using re-use and closed loop systems;
- (b) prioritise waste management in accordance with the **Waste Hierarchy**;
- (c) avoid consumable single use items (including packaging) unless necessary for the purposes of health and safety (e.g. personal protective equipment);
- (d) implement measures to ensure reusable items are reused, compostable items are composted, and recyclable products are recycled; and
- (e) when purchasing goods consider used, reconditioned and remanufactured items on equal terms to new items;

Climate change

- (f) reduce Greenhouse Gas (**GHG**) emissions associated with the **Deliverables**, including minimising the consumption of energy and sourcing any energy used from renewable sources as far as possible;
- (g) commit to reaching net zero by 2050 or earlier, for scope 1, 2 and 3 emissions;

Pollution

- (g) avoid the use of substances that are hazardous/harmful to the environment, but if these are necessary then implement strict management methods to ensure no pollution incidents occur;
- (h) avoid extraction from or discharges to air, water or land;

Nature and biodiversity

- (i) the delivery of the **Deliverables** shall not cause any harm to any habitat or flora and fauna;
- (j) identify, minimise and manage biosecurity risks from the **Deliverables** (which include risks to animal, plant and tree health from harmful pests and diseases);

Food

- (k) implement measures to:
 - (i) avoid and reduce food waste, including during storage, preparation, serving and consumption;

- (ii) ensure that no food waste generated is disposed to landfill, instead ensure that any food waste generated is sent for composting or an equivalent resource recovery method;
- (iii) supply surplus food to a responsible redistribution scheme;
- (l) prioritise food suppliers and ingredients which can provide reduced environmental impacts (e.g. locally sourced; growers using nature friendly farming methods); and
- (m) only use meat and fish that has reliable sustainability certification.

25.13 If during the **Contract Duration** the **Supplier** measures or obtains data on environmental impacts (e.g. weight of waste arisings by type; **GHG** emissions) associated with the **Deliverables**, the **Supplier** shall provide this data to the **OEP**.

Environmental good practice in the Contract supply chain

25.14 The **Supplier** shall, as far as is reasonably practicable:

- (a) include environmental criteria in its selection of **Subcontractors**;
- (b) ensure that the requirements of this clause 25 are also complied with by its **Subcontractors**;
- (c) require its **Subcontractors** to proactively identify and implement solutions to avoid or reduce environmental impacts and improve sustainability in the delivery of the **Contract**; and
- (d) obtain reliable data on the environmental impacts associated with the subcontracted Deliverables. The **Supplier** shall provide data obtained to the **OEP**.

25.15 The **OEP** may, at any time, request an audit of the practices or documents outlined in these terms.

26. Preventing fraud, bribery and corruption

26.1 The **Supplier** shall not:

- (a) commit any criminal offence referred to in the **Regulations** 57(1) and 57(2); or
- (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the **OEP** or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the **Contract** or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the **Contract** or any other public function.

26.2 The **Supplier** shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with **Good Industry Practice**, to prevent any matters referred to in clause 26.1 and any fraud by any **Subcontractors**, **Supplier Staff** or the **Supplier** (including its

shareholders, members and directors) in connection with the **Contract** and shall notify the **OEP** immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

- 26.3 If the **Supplier**, any **Subcontractor** or the **Supplier Staff** engages in conduct prohibited by clause 26.1 or commits fraud in relation to the **Contract** or any other contract with any **Crown Body** (including the **OEP**) the **OEP** may:
- (a) terminate the **Contract** under clause 9.4 and recover from the **Supplier** the amount of any loss suffered by the **OEP** resulting from the termination; or
 - (b) recover in full from the **Supplier** any other loss sustained by the **OEP** in consequence of any breach of this clause.

27. Tax

- 27.1 The **Supplier** must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.
- 27.2 Where the **Supplier** or any **Subcontractors** or **Supplier Staff** are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the **Contract**, the **Supplier** must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax (including IR35), the Social Security Contributions and Benefits Act 1992 and National Insurance contributions; and
 - (b) indemnify the **OEP** against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the **Contract Duration** in connection with the provision of the **Deliverables** by the **Supplier** or any of the **Subcontractors** or **Supplier Staff**.
- 27.3 If any of the **Supplier Staff** or **Subcontractors** are **Workers** who receive payment relating to the **Deliverables**, then the **Supplier** must ensure that its contract with the **Worker** contains the following requirements:
- (a) the **OEP** may, at any time during the term of the **Contract**, request that the **Worker** provides information which demonstrates they comply with clause 27.2, or why those requirements do not apply, the **OEP** can specify the information the **Worker** must provide and the deadline for responding;
 - (b) the **Worker's** contract may be terminated at the **OEP's** request if the **Worker** fails to provide the information requested by the **OEP** within the time specified by the **OEP**;
 - (c) the **Worker's** contract may be terminated at the **OEP's** request if the **Worker** provides information which the **OEP** considers isn't good enough to

demonstrate how it complies with clause 27.2 or confirms that the **Worker** is not complying with those requirements; and

- (d) the **OEP** may supply any information they receive from the **Worker** to HMRC for revenue collection and management.

27.4 Without prejudice to clause 27.3, if the **Supplier** knows or reasonably suspects that any of the **Supplier Staff** or **Subcontractors** are (or are likely to become) **Workers**, the **Supplier** shall immediately notify this to the **OEP**.

28. Health and safety

28.1 The **Supplier** must perform its obligations meeting the requirements of:

- (a) all applicable law regarding health and safety;
- (b) the **OEP's** current health and safety policy and procedures while at the **OEP's** premises, as provided to the **Supplier**.

28.2 The **Supplier** and the **OEP** must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of that relate to the performance of the **Contract**.

29. Conflict of interest

29.1 The **Supplier** must take action to ensure that neither the **Supplier**, any **Subcontractors** nor any **Supplier Staff** are placed in the position of an actual or potential conflict between the financial or personal circumstances or duties of the **Supplier**, **Subcontractor** or the **Supplier Staff** and the duties owed to the **OEP** under the **Contract**, in the reasonable opinion of the **OEP**.

29.2 The **Supplier** must promptly notify and provide details to the **OEP** if a conflict of interest happens or is expected to happen.

29.3 The **OEP** can terminate this **Contract** immediately by giving notice in writing to the **Supplier** or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

30. Reporting a breach of the Contract

30.1 As soon as it is aware of it the **Supplier**, its **Subcontractors** and **Supplier Staff** must report to the **OEP** any actual or suspected breach of law or the terms of the **Contract**.

30.2 The **Supplier** must not retaliate against any of the **Subcontractors** or **Supplier Staff** who in good faith report a breach listed in clause 30.1.

31. Resolving disputes

- 31.1 If there is a dispute between the **Parties**, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other **Party**, meet in good faith to resolve the dispute.
- 31.2 If the dispute is not resolved at that meeting, the **Parties** can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the **Parties** cannot agree on a mediator, the mediator will be nominated by CEDR. If either **Party** does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 31.3 to 31.5.
- 31.3 Unless the **OEP** refers the dispute to arbitration using clause 31.4, the **Parties** irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
 - (b) grant interim remedies; and
 - (c) grant any other provisional or protective relief.
- 31.4 The **Supplier** agrees that the **OEP** has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 31.5 The **OEP** has the right to refer a dispute to arbitration even if the **Supplier** has started or has attempted to start court proceedings under clause 31.3, unless the **OEP** has agreed to the court proceedings or participated in them. Even if court proceedings have started, the **Parties** must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 31.4.
- 31.6 The **Supplier** cannot suspend the performance of the **Contract** during any dispute.

32. Which law applies

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

Glossary and understanding the Contract

Glossary

In this **Contract**, unless the context otherwise requires, the following words or phrases shall have the following meanings:

"**Approved Subcontractor**" means any third party appointed by the **Supplier** in connection with the performance of the **Contract** that has been approved by the **OEP** in accordance with clause 20.4.

"**Central Government Body**" means a body listed in one of the following subcategories of the Central Government classification of the Public sector Classification Guide, as published and amended from time to time by the office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency.

"**Charges**" means the charges for the **Deliverables** as specified in the **Order Form**.

"**Confidential Information**" means all information, whether written or oral (however recorded), provided by the disclosing **Party** to the receiving **Party** and which:

- (a) is known by the receiving **Party** to be confidential;
- (b) is marked as or stated to be confidential; or
- (c) ought reasonably to be considered by the receiving **Party** to be confidential.

"**Contract**" means the contract between the OEP and the **Supplier** which is created in accordance with clause 1 and which is made up of:

- (a) the **Order Form** (including any documents annexed to or incorporated by reference in the **Order Form**);
- (b) the **Core Terms**; and
- (c) the **Special Terms** (if any).

"**Controller**" has the meaning given to it in the **UK GDPR** or the **EU GDPR** as the context requires.

"**Core Terms**" means the contract terms set out in this document.

"**Crown Body**" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

"**Date of Delivery**" means that date by which the **Deliverables** must be delivered to the **OEP**, as specified in the **Order Form** or as otherwise specified by the **OEP** to the **Supplier** from time to time.

"**Contract Details**" means a document that records the details of the Contract and is signed by the **Parties**.

"Contract Duration" means the period from the date the Contract is created as described in clause 1.1 or 1.2 (as applicable) to the **Expiry Date**, as such period may be extended in accordance with clause 9.2 or terminated in accordance with the terms and conditions of the **Contract** (or earlier if required by law).

"Data Protection Legislation" means:

- (i) the UK **GDPR**;
- (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable law about the processing of personal data and privacy; and
- (iv) (to the extent that it applies) the **EU GDPR**.

"Deliver" means to hand over the **Deliverables** to the **OEP** at the address and on the date specified in the **Order Form** or as otherwise instructed by the **OEP** from time to time, which shall include unloading and any other specific arrangements agreed in accordance with clause 2.2. **"Delivered"** and **"Delivery"** shall be construed accordingly.

"Deliverables" means the Goods, Services and/or deliverables that are to be provided by the **Supplier** as described in the **Specification**.

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679).

"Existing IPR" means any and all intellectual property rights that are owned by or licensed to either **Party** and which have been developed independently of the **Contract** (whether prior to the date of the **Contract** or otherwise).

"Expiry Date" means the date for expiry of the **Contract** as set out in the **Order Form**, or such later date as may be specified by the **OEP** if the **Contract Duration** is extended by the **OEP** under clause 9.2.

"FOIA" means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the **Information Commissioner** or relevant Government department in relation to such legislation.

"Force Majeure Event" means any event, occurrence, circumstance, matter or cause affecting the performance by either **Party** of its obligations under the **Contract** arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the **Contract** but excluding:

- (a) any industrial dispute relating to the **Supplier**, the **Subcontractors** or the **Supplier Staff** (including any subsets of them) or any other failure in the **Supplier** or the **Subcontractor's** supply chain;
- (b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the **Party** concerned; and
- (c) any failure of delay caused by a lack of funds.

"Greenhouse Gas" or "GHG" means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC at the date of this agreement, as may be amended from time to time.

"Goods" means the goods (if any) to be supplied by the **Supplier** to the **OEP** under the **Contract**.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.

"Information" has the meaning given under section 84 of the **FOIA**.

"Information Commissioner" means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies.

"Insolvency Event" means in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction.

"Key Personnel" means any persons specified as such in the **Order Form** or otherwise notified as such by the **OEP** to the **Supplier** in writing.

"LED" means the Law Enforcement Directive (Directive (EU) 2016/680).

"New IPR" means all and intellectual property rights in any materials created or developed by or on behalf of the **Supplier** pursuant to the **Contract** but shall not include the **Supplier's Existing IPR**.

"OEP" means the Office for Environmental Protection, a Non-Departmental Public Body established under the Environment Act 2021 and having its principal office at Worcestershire County Hall, Spetchley Road, Worcester, WR5 2NP.

"OEP Cause" means any breach of the obligations of the **OEP** or any other default, act, omission, negligence or statement of the **OEP**, of its employees, servants, agents in connection with or in relation to the subject-matter of the **Contract** and in respect of which the **OEP** is liable to the Supplier.

"OEP Data" means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the **OEP's** confidential information, and which:
 - (i) are supplied to the **Supplier** by or on behalf of the **OEP**; or

(ii) the **Supplier** is required to generate, process, store or transmit pursuant to the **Contract**; or

(b) any **Personal Data** for which the **OEP** is the **Data Controller**.

"**Order Form**" means, as applicable, the **Contract Details** that are signed by the **Parties** or the **Purchase Order** that is issued by the **OEP** in respect of the **Contract**.

"**Party**" means the **Supplier** or the **OEP** (as appropriate) and "**Parties**" shall mean both of them.

"**Personal Data**" has the meaning given to it in the **UK GDPR** or the **EU GDPR** as the context requires.

"**Processor**" has the meaning given to it in the **UK GDPR** or the **EU GDPR** as the context requires.

"**Purchase Order**" means a purchase order document that is issued by the **OEP** that contains the details of the **Contract** and the **Deliverables** to be supplied by the **Supplier** to the **OEP** in accordance with the terms of the **Contract**, but that is not set up to be signed by the **Parties**.

"**Purchase Order Number**" means the **OEP's** unique reference number of the **Purchase Order** relating to the **Contract**..

"**Regulations**" means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time.

"**Request for Information**" has the meaning set out in the **FOIA** or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply).

"**Services**" means the services (if any) to be supplied by the **Supplier** to the **OEP** under the **Contract**.

"**Special Terms**" means the additional terms and conditions (if any) that apply to the **Contract**, as set out or referred to in the **Order Form**.

"**Specification**" means the specification for the **Deliverables** to be supplied by the Supplier to the **OEP** (including as to quantity, description and quality) as set out or referred to in the **Order Form**.

"**Subcontractor**" means any third party appointed by the **Supplier** in connection with the performance of the **Contract**.

"**Supplier Staff**" means all directors, officers, employees, agents, consultants and contractors of the **Supplier** and/or of any **Subcontractor** engaged in the performance of the **Supplier's** obligations under a **Contract**.

"**Supplier**" means the person named as **Supplier** in the **Order Form**.

"**Transparency Information**" means the terms of this **Contract** and any other information relating to this **Contract** that the **OEP** is obliged to publish under PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement->

[policy-note-0117-update-to-transparency-principles](#)) (as amended or replaced from time to time) or under any applicable laws or guidance from time to time.

"**UK GDPR**" means **EU GDPR**, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.

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

"**Waste Hierarchy**" means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:

- (a) Prevention;
- (a) Preparing for re-use;
- (b) Recycling;
- (c) Other Recovery; and
- (d) Disposal;

"**Workers**" means any one of the **Subcontractors** or **Supplier Staff** which the **OEP**, in its reasonable opinion, considers is an individual:

- (a) to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and/or
- (b) to which the off-payroll working rules (IR35) apply in respect of the **Deliverables** (including having regard to the guidance set out at www.gov.uk/topic/business-tax/ir35).

"**Working Day**" means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

Understanding the Contract

In the **Contract**, unless the context otherwise requires:

- 33.1 the headings in this **Contract** are for information only and do not affect the interpretation of the **Contract**;
- 33.2 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 33.3 the words and phrases "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".