

Dynamic Purchasing System (DPS) Agreement Terms & Conditions

BTA1993 – DPS - Commercial Partnerships & Related Services

Lot 1 – Carriers

Lot 2 – Intermediaries

Lot 3 – Accommodation

Lot 4 – Product

Lot 5 – Brands

Lot 6 – Inbound Operators / Destination Management Companies

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SCHEDULES

1. **Definitions**
2. **Specification (Lots 1 – 6)**
3. **DPS Pricing**
4. **Call Off Agreement**
5. **Collaboration Agreement (Lots 1 – 5 only)**
6. **Standard Terms & Conditions for Services (Lot 6 only)**
7. **Security Management**
8. **Records Management**

THIS DPS AGREEMENT is made on the 11 September 2023 (Commencement Date).

BETWEEN:

- (1) **BRITISH TOURIST AUTHORITY**, a statutory body incorporated under the Development of Tourism Act 1969 whose office is at 3 Grosvenor Gardens, Victoria, London SW1W 0BD ("**DPS Authority**"); and
- (2) **[insert name]**, a company registered in England and Wales under company number **[insert reg no]** whose registered office is at **[insert address]** ("**Supplier**"), each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) On 14 August 2023, the DPS Authority advertised in the Find a Tender Service (2023/S 000-023729) ("**Contract Notice**"), its intention to establish a Dynamic Purchasing System (DPS) for Commercial Partnerships & Related Services under the Light Touch Regime, subject to limited regulations in accordance with Regulations 74 – 76 of the Public Contracts Regulations 2015. The DPS contains the following Lots:

- Lot 1 – Carriers
- Lot 2 – Intermediaries
- Lot 3 – Accommodation
- Lot 4 – Product
- Lot 5 – Brands
- Lot 6 – Inbound Operators and/or Destination Management Companies (DMCs)

The Supplier completed a Standard Selection Questionnaire to confirm their interest in providing Services under the relevant DPS Lot(s). In successfully completing the Standard Selection Questionnaire, the Supplier hereby agrees to provide the DPS Authority with the required Services under the relevant DPS Lot(s) subject to being an Awarded Supplier and awarded a Call Off Agreement following a Further Competition process.

- (B) This DPS Agreement establishes the basis on which the DPS Authority may during the Call-Off Period, enter into Call-Off Agreements with the Supplier for the provision of Commercial Partnership & Related Services and the terms and conditions pursuant to which such Services shall be provided.
- (C) The Supplier acknowledges and accepts that this DPS Agreement confers no exclusivity on the Supplier and that there is no obligation on the DPS Authority to procure any Commercial Partnership & Related Services from the Supplier, or award a Call Off Agreement to the Supplier under this DPS Agreement.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this DPS Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this DPS Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) a reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to a Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement;
 - (h) references to this DPS Agreement are references to this DPS Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this DPS Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the DPS Authority and the Parties shall update this DPS Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses;
 - (b) Schedule 1 (Definitions);
 - (c) all other Schedules to this DPS Agreement and their Annexes and appendices;
 - (d) the Collaboration Agreement (Schedule 5) and their Annexes and appendices - Lot 1 - 5 only;

- (e) the Standard Terms & Conditions for Services (Schedule 6) and their Annexes and appendices – Lot 6 only;
- (f) the Specification (Schedule 2) updated and issued by the DPS Authority as part of the Further Competition process;
- (g) the Supplier's Tender to the Further Competition and any Supplier responses to clarification questions raised by the DPS Authority as part of the Further Competition process;
- (h) the DPS Agreement Pricing (Schedule 3) agreed by the DPS Authority and the Supplier as part of the Further Competition process;
- (i) the Call Off Agreement (Schedule 4) for Services called off under this DPS Agreement.

1.5 The DPS Authority's co-operation in the development and/or approval of any DPS Documentation under this DPS Agreement shall not relieve the Supplier of its obligation to comply with this DPS Agreement or to comply with any Collaboration Agreement (Lots 1 – 5), Standard Terms & Conditions for Services (Lot 6) or Call-Off Agreement entered into under this DPS Agreement.

SECTION B – DPS ARRANGEMENTS

2. Term of DPS Agreement

2.1 This DPS Agreement shall take effect on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms of this DPS Agreement or otherwise by operation of Law for two (2) years (Term), when it shall terminate automatically without notice until the Expiry Date. Where the DPS Authority enters into a Call-Off Agreement with the Awarded Supplier within the Term of the DPS, the DPS Agreement shall prevail and continue in force until the expiry of the Call-Off Agreement.

2.2 The DPS Authority appoints the Supplier to the DPS and the Supplier accepts such appointment.

2.3 The Supplier acknowledges and agrees that:

- (a) its relationship with the DPS Authority is not exclusive; and
- (b) the DPS Authority shall not be obliged to contract with the Supplier for the provision of any of Services

3. Call-Off Period and Call-Off Procedure

3.1 The Supplier may only enter into Call-Off Agreements during the Call-Off Period and only in accordance with this Call-Off Procedure.

3.2 Subject to clause 2.1 above, the Supplier acknowledges and agrees that the Term of each Call-Off Agreement shall not exceed beyond twenty-four (24) after the expiry of the DPS Agreement.

3.3 Subject to clause 3.1 above, before awarding a Call Off Agreement under this DPS Agreement, the DPS Authority shall:

3.3.1 Develop a clear Statement of Requirements/Specification;

3.3.2 Issue the Statement of Requirements/Specification to all Suppliers in the relevant Lot(s) to commence a Further Competition providing the Supplier with no less than 10 calendar days to respond.

- 3.4 Subject to paragraph 3.3.2 above, upon receiving a Further Competition request under this DPS Agreement, the Supplier shall:
- 3.4.1 Review the Statement of Requirements/Specification;
 - 3.4.2 Request clarifications and/or modifications to the Statement of Requirements/Specification subject to the approval of the DPS Authority and submit a Tender response.
 - 3.4.3 Subject to being identified as the Awarded Supplier, accept and deliver the Call Off Agreement request in accordance with the Terms set out in the DPS Agreement, Collaboration Agreement (Lots 1 – 5), Standard Terms & Conditions (Lot 6) and the requirements set out in the Call Off Agreement including any Special Terms issued by the DPS Authority.
 - 3.4.4 Where the DPS Authority has appointed only one Supplier to any Lot(s), until such time additional Suppliers are appointed to the relevant Lot(s), the DPS Authority reserves the right and shall be entitled to award a Call Off Agreement to the Supplier on a Direct Award basis without any Further Competition.

4. Services

- 4.1 The Supplier shall perform its obligations under this DPS Agreement in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Supplier's own established procedures and practices to the extent that the same do not conflict with the requirements of Clauses 4.1(a) and 4.1(b).
- 4.2 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 4.1(a) to 4.1(c), the Supplier shall immediately notify the DPS Authority in writing of such inconsistency and the DPS Authority Representative shall, as soon as reasonably practicable, notify the Supplier which requirement that the Supplier shall comply with.
- 4.3 The Supplier must deliver all Services on time, and must take all reasonable care to ensure performance does not disrupt the DPS Authority's operations, employees or other contractors.
- 4.4 The Supplier must at its own risk and expense provide all Supplier equipment to deliver the Services.
- 4.5 The DPS Authority is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this DPA Agreement.

DPS Authority Responsibilities

- 4.6 The DPS Authority shall comply with, and perform, its responsibilities and obligations contained in this DPS Agreement.

5. Service Improvement and Quality Plans

Service Improvement

- 5.1 The Supplier shall respond to any reasonable request from the DPS Authority to identify new or potential improvements to the Services including:

- (a) the emergence of new and evolving relevant technologies which could improve the Services and those technological advances potentially available to the Supplier and the DPS Authority which the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the DPS Authority, Recipients which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the DPS Authority, and/or
 - (e) changes to business processes and ways of working that would enable reductions in the total energy consumed in the delivery of the Services.
- 5.2 The Supplier shall ensure that the information that it provides to the DPS Authority in response to any request made under Clause 5.1 shall be sufficient for the DPS Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the DPS Authority reasonably requests in order to allow the DPS Authority to decide whether to implement the applicable improvement.
- 5.3 If the DPS Authority wishes to incorporate any improvement identified by the Supplier in accordance with this Clause 5, the DPS Authority shall request a Variation in accordance with Clause 39.

Quality Plans

NOT USED

SECTION C – FEES, TAXATION AND VALUE FOR MONEY PROVISIONS

6. Fees

- 6.1 The Fees for all Contracts during the Call Off Period shall be calculated based on the prices as set out in the Pricing Schedule (Schedule 3) and Call Off Agreement (Schedule 4) and the payment terms for all Contracts shall be as set out in the Call Off Agreement for the provision of the Services. The DPS Authority shall not be liable for any Fees or payments until a Call Off is made under this DPS Agreement and is duly signed by both Parties.
- 6.2 Where the Supplier is entitled to receive any Fees (including, without limitation, any costs, charges or expenses) for Services delivered under this DPS Agreement, the DPS Authority will pay the Supplier's invoice for the agreed sums. Such undisputed invoices shall be paid by the DPS Authority within 30 days of the date of such invoice.
- 6.3 If a Party fails to pay any undisputed sum properly due to the other Party under this DPS Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

7. Records Management

7.1 The Supplier shall comply with the provisions of the DPS Authorities Records Management policy (Schedule 8).

8. Tax Compliance

8.1 If, at any point during the DPS Term, an Occasion of Tax Non-Compliance occurs in respect of the Supplier or a Key Sub-contractor, the Supplier shall upon the request from the DPS Authority promptly provide to the DPS Authority:

- (a) details of the steps which the Supplier or Key Sub-contractor (as applicable) is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the DPS Authority may reasonably require.

SECTION D – CONTRACT GOVERNANCE

9. Governance

The Parties shall comply with the provisions of this Agreement in relation to the management and governance of this DPS Agreement.

10. Change Control

10.1 Either Party may request a Variation to the Agreement under Clause 39 (Variation).

10.2 Not used

10.3 If the DPS Contract Change cannot be agreed or resolved by the Parties, the DPS Authority can either:

- (a) agree that the DPS Agreement continues without the DPS Contract Change; or
- (b) refer the Dispute to be resolved using Clause 43 (Disputes).

11. Not Used

12. Change in Law

12.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this DPS Agreement or under any Call-Off Agreement nor be entitled to an increase in the prices or Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

- 12.2 If a Specific Change in Law occurs or will occur during the DPS Term (other than as referred to in Clause 12.1(b), the Supplier shall:
- (a) notify the DPS Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any DPS Contract Change or Standard Terms Change is required to this DPS Agreement or a change is required to any Call-Off Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations under this DPS Agreement or any Call-Off Agreement is required; and
 - (b) provide the DPS Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Key Sub-contractors; and
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services.
- 12.3 Any variation in the prices or Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 12.1(b) shall be implemented in accordance with Clause 11 (Change Control).

13. Change in Standards

NOT USED

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14. Supplier Personnel

- 14.1 The Supplier shall ensure that all Supplier Personnel are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence.
- 14.2 If the DPS Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this DPS Agreement or any Call-Off Agreement, it may direct the Supplier to end the involvement in the provision of the Ordered Services of the relevant person(s).

Employment Indemnity

- 14.3 The Parties agree that:
- (a) the Supplier shall both during and after the DPS Term indemnify the DPS Authority against all Employee Liabilities that may arise as a result of any claims brought against the DPS Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel;
 - (b) the DPS Authority shall both during and after the DPS Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the DPS Authority or any of the DPS Authority's employees, agents, consultants and contractors

Income Tax and National Insurance Contributions

- 14.4 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this DPS Agreement, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the DPS Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

15. Supply Chain Rights

Sub-contracting

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that it is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice; and
 - (b) comply with its obligations under this DPS Agreement and any Call-Off Agreement.
- 15.2 Prior to the Supplier sub-contracting any of its obligations under this DPS Agreement or any Call-Off Agreement, the Supplier shall notify the DPS Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number (or the relevant local equivalent where the proposed Sub-contractor is incorporated outside of the UK);
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the DPS Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

Sub-contracts to be in writing

- 15.3 The Supplier shall ensure all Sub-contracts are made in writing.

Supply chain protection

- 15.4 The Supplier shall ensure that all Sub-contracts to which the Supplier is a party contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
 - (b) a right for the DPS Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

15.5 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice.

Termination of Sub-contracts

15.6 The DPS Authority may require the Supplier to terminate:

(a) a Key Sub-contract (or, where the Key Sub-contract is not exclusively for the purpose of delivery of the Services, the part of the Key Sub-contract which relates to the Ordered Services) where:

(i) the Key relevant Sub-contractor or any of its Affiliates have embarrassed the DPS Authority, or otherwise brought the DPS Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the DPS Authority regardless of whether or not such act or omission is related to the Key Sub-contractor's obligations in relation to the Services or otherwise;

(b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor and the person who now Controls the Key Sub-contractor does not satisfy one or more of the Selection Questionnaire requirements, unless:

(i) the DPS Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

(ii) the DPS Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the DPS Authority was given notice of the change of Control.

15.11A The DPS Authority may require the Supplier to terminate, or to procure the termination of, a Sub-contract where either:

(a) the DPS Authority notifies the Supplier that an Occasion of Tax Non-Compliance has occurred in respect of the applicable Sub-contractor; or

(b) the DPS Authority notifies the Supplier that such Sub-contractor has failed to submit a tax return to HMRC by the date required by Law or failed to pay any tax penalties or other charges due to HMRC by the required date and provided always that such Sub-contractor does not rectify such non-compliance or provide HMRC with assurances that it shall rectify such non-compliance within a reasonable period following the date on which such Sub-contractor is notified by the Supplier (such reasonable period as agreed between the DPS Authority and the Supplier in each case).

SECTION F – DATA, SECURITY, CONFIDENTIALITY AND IPR

16. DPS Authority Data and Security Requirements

16.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the DPS Authority Data.

16.2 The Supplier shall not store, copy, disclose, or use the DPS Authority Data except as necessary for the performance by the Supplier of its obligations under this DPS Agreement or as otherwise expressly authorised in writing by the DPS Authority.

- 16.3 To the extent that DPS Authority Data is held and/or processed by the Supplier, the Supplier shall supply that DPS Authority Data to the DPS Authority as requested by the DPS Authority in such format as the DPS Authority may reasonably require.
- 16.4 The Supplier shall preserve the integrity of DPS Authority Data and prevent the corruption or loss of DPS Authority Data at all times that the relevant DPS Authority Data is under its control or the control of any Sub-contractor.
- 16.5 The Supplier shall perform secure back-ups of all DPS Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the DPS Authority (or to such other person as the DPS Authority may direct) at all times upon request and are delivered to the DPS Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 16.6 The Supplier shall ensure that any system on which the Supplier holds any DPS Authority Data, including back-up data, is a secure system and complies with the provisions of Schedule 7 (Security Management).
- 16.7 If the DPS Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the DPS Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of DPS Authority Data and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the DPS Authority's notice; and/or
 - (b) itself restore or procure the restoration of DPS Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 16.8 If at any time the Supplier suspects or has reason to believe that DPS Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the DPS Authority immediately and inform the DPS Authority of the remedial action the Supplier proposes to take.
- 16.9 The DPS Authority shall notify the Supplier of any proposed changes to the Security Requirements.
- 16.10 If the Supplier believes that a proposed change to the Security Requirements will have a material impact on the Ordered Services it may request a DPS Contract Change in accordance with Clause 10.
- 16.11 Until and/or unless a DPS Contract Change is agreed by the DPS Authority pursuant to Clause 16.10 the Supplier shall continue to perform the Services in accordance with its existing obligations.

17. Confidentiality

- 17.1 For the purposes of this Clause 17, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 17.2 Except to the extent set out in this Clause 17, or where disclosure is expressly permitted elsewhere in this DPS Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored

and the nature of the Confidential Information contained in those materials) which meets the requirements of Schedule 7 (Security Management);

- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this DPS Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this DPS Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

17.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 18 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the DPS Authority arising out of or in connection with this DPS Agreement;
 - (ii) the examination and certification of the DPS Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DPS Authority is making use of any Services provided under this DPS Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this DPS Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

17.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.

17.5 The Supplier may disclose the Confidential Information of the DPS Authority on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Ordered Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this DPS Agreement;
- (b) its auditors; and

- (c) its professional advisers for the purposes of obtaining advice in relation to this DPS Agreement.

Where the Supplier discloses Confidential Information of the DPS Authority pursuant to this Clause 17.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this DPS Agreement by the persons to whom disclosure has been made.

17.6 The DPS Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the DPS Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the DPS Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clauses 17.6(a) to 18.6(c) (including any benchmarking organisation) for any purpose relating to or connected with this DPS Agreement and/or any Call-Off Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this DPS Agreement;
or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this DPS Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the DPS Authority under this Clause 17.

17.7 Nothing in this Clause 17 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this DPS Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

17.8 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this DPS Agreement (save for any Commercially Sensitive Information and any information which is exempt from disclosure in accordance with the provisions of the FOIA).

17.9 Notwithstanding any other provision of this DPS Agreement, the Supplier hereby gives its consent for the DPS Authority to publish to the general public this DPS Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).

17.10 The Supplier shall assist and co-operate with the DPS Authority to enable the DPS Authority to publish this DPS Agreement, any information provided to the DPS Authority in relation to the Supplier's performance under the DPS Agreement. However, the extent, content and format of the disclosure is the DPS Authority's decision, which does not need to be reasonable

Confidentiality of Undertaking

- 17.11 The Supplier shall treat as strictly confidential and shall not release to any third party any and all information either resulting from the provision of the Services to DPS Authority under the terms of this Agreement or provided to the Supplier by DPS Authority unless such information is already in the public domain. This provision shall survive termination or expiry of this Agreement.
- 17.12 The Supplier shall procure that Sub-contractors and Supplier Personnel maintain the confidentiality of the Services and the DPS Authority's Data at all times.

18. Freedom of Information

- 18.1 The Supplier acknowledges that the DPS Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and co-operation as reasonably requested by the DPS Authority to enable the DPS Authority to comply with its obligations under the FOIA and the EIRs;
 - (b) transfer to the DPS Authority all Requests for Information relating to this DPS Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the DPS Authority with a copy of all Information requested in the Request for Information which is in the Supplier's possession, or control in the form that the DPS Authority requires within 5 Working Days (or such other period as the DPS Authority may reasonably specify) of the DPS Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the DPS Authority.
- 18.2 The Supplier acknowledges that the DPS Authority may be required under the FOIA and the EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The DPS Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this DPS Agreement) the DPS Authority 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 the FOIA and/or the EIRs.

19. Protection of Personal Data

- 19.1 With respect to any Processing of DPS Authority Personal Data by the Supplier under this DPS Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, the DPS Authority is the Controller and the Supplier is the Processor. The Supplier shall notify the DPS Authority immediately if it considers that any of the DPS Authority's instructions infringe the Data Protection Legislation.
- 19.2 The Supplier shall provide all reasonable assistance to the DPS Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the DPS Authority include:

- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of DPS Authority Personal Data.

19.3 The Supplier shall, in relation to any DPS Authority Personal Data processed in connection with its obligations under this Agreement:

- (a) Process that DPS Authority Personal Data only in accordance with Schedule 2 Specification, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the DPS Authority before Processing the DPS Authority Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Breach of Security having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Breach of Security;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Supplier Personnel do not Process DPS Authority Personal Data except in accordance with this Agreement and Schedule 2 (Specification).
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the DPS Authority Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under Clause 17 (Confidentiality), Clause 18 (Freedom of Information) and this Clause 19;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the DPS Authority Personal Data and do not publish, disclose or divulge any of the DPS Authority Personal Data to any third party unless directed in writing to do so by the DPS Authority or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data and the DPS Authority Personal Data; and

- (d) not transfer DPS Authority Personal Data outside of the UK or the EU except as specified in Schedule 2 (Specification) to the DPS Agreement unless the prior written consent of the DPS Authority has been obtained and the following conditions are fulfilled:
 - (i) the DPS Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the DPS Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any DPS Authority Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the DPS Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the DPS Authority with respect to the processing of the DPS Authority Personal Data; and
- (e) at the written direction of the DPS Authority, delete or return DPS Authority Personal Data (and any copies of it) to the DPS Authority on termination of the Agreement unless the Supplier is required by Law to retain the DPS Authority Personal Data.

19.4 Subject to Clause 19.5, the Supplier shall notify the DPS Authority immediately, if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any DPS Authority Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with DPS Authority Personal Data Processed under this Agreement;
- (e) receives a request from any third party for disclosure of DPS Authority Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Personal Data Breach.

19.5 The Supplier's obligation to notify under Clause 19.4 or Clause 10.1(c) shall include the provision of further information to the DPS Authority in phases, as details become available.

19.6 Taking into account the nature of the processing, the Supplier shall provide the DPS Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 19.4 (and insofar as possible within the timescales reasonably required by the DPS Authority) including by promptly providing:

- (a) the DPS Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the DPS Authority to enable the DPS Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the DPS Authority, at its request, with any DPS Authority Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the DPS Authority following any Breach of Security;
- (e) assistance as requested by the DPS Authority with respect to any request from the Information Commissioner's Office or any consultation by the Controller with the Information Commissioner's Office.

19.7 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the DPS Authority determines that the Processing is not occasional;
- (b) the DPS Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or DPS Authority Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the DPS Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

19.8 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

19.9 Before allowing any Sub-processor to Process any DPS Authority Personal Data related to this Agreement, the Supplier must:

- (a) notify the DPS Authority in writing of the intended Sub-processor and Processing;
- (b) obtain the written consent of the DPS Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 19 such that they apply to the Sub-processor as if the Sub-processor were the Supplier; and
- (d) provide the DPS Authority with such information regarding the Sub-processor as the DPS Authority may reasonably require.

19.10 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

19.11 The DPS Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

19.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The DPS Authority may on not less than 30 Working Days' notice to the Supplier amend the DPS Agreement (including the Standard Terms) to ensure that it complies with any guidance issued by the Information Commissioner's Office.

19.13 The DPS Authority will:

- (a) comply with its obligations under Data Protection Legislation in relation to its collection, Processing and provision of DPS Authority Personal Data to Supplier; and

- (b) not instruct the Supplier to Process DPS Authority Personal Data where there is any restriction in place which would affect the DPS Authority's ability to disclose such DPS Authority Personal Data to Sub-contractor or a Sub-Processor.

20. Publicity and Branding

20.1 The Supplier shall not:

- (a) make any press announcements or publicise this DPS Agreement or its contents in any way;
or
- (b) use the DPS Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the DPS Authority.

20.2 Each Party acknowledges to the other that nothing in this DPS Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

21. Intellectual Property Rights (IPRs)

21.1 Save as granted under this DPS Agreement, each Party keeps ownership of its own Existing IPRs.

21.2 Where either Party acquires ownership of IPRs incorrectly, including by operation of Law, under this DPS Agreement, it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request (whenever made) and at its own cost.

21.3 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations under this DPS Agreement shall not infringe any IPR of any third party.

21.4 If there is an IPR Claim, the Supplier indemnifies the DPS Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

21.5 If an IPR Claim is made or anticipated the Supplier must at its own expense and the DPS Authority's sole option, either:

- (a) obtain for the DPS Authority and, the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.

21.6 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in this Clause 21 or otherwise agreed in writing.

SECTION G – SUPPLIER AND DPS AUTHORITY PROTECTIONS

22. Warranties

22.1 Each Party warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform this DPS Agreement;
- (b) this DPS Agreement is executed by its duly authorised representative; and
- (c) once duly executed, this DPS Agreement will constitute its legal, valid and binding obligations.

22.2 The Supplier warrants and represents that:

- (a) it has all necessary consents and regulatory approvals to enter into this DPS Agreement;
- (b) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this DPS Agreement;
- (c) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the Selection Questionnaire, the Invitation to Participate and any clarification questions raised by the DPS Authority (if applicable), the Supplier's Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the DPS Authority in writing prior to the date of this Agreement;
- (d) it has and shall continue to have all necessary rights for all IPRs that are necessary to perform its obligations under this DPS Agreement and, at the point it enters into any Call-Off Agreement, it will have and shall continue to have all necessary rights for all IPRs that are necessary to perform its obligations under that Call-Off Agreement which maybe entered into under this DPS Agreement and shall maintain such IPRs for the duration of the DPS Term;
- (e) it has notified the DPS Authority in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this DPS Agreement;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (h) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this DPS Agreement had this DPS Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

22.3 Each of the representations and warranties set out in Clauses 22.1 and 22.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this DPS Agreement.

22.4 Except as expressly stated in this DPS Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

22.5 Each time a Call-Off Agreement is entered into the warranties, representations and undertakings in this DPS Agreement shall be deemed repeated by the Supplier to the DPS Authority with reference to the circumstances existing at the time that they are deemed to be repeated and any reference to the DPS Commencement Date (whether express or implied) shall be construed as a reference to the Commencement Date of the relevant Call-Off Agreement (as defined in the Standard Terms).

22.6 If at any time a Party becomes aware that a warranty or representation given by it under Clause 22.1 or 22.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

23. Force Majeure

23.1 Neither Party shall be liable to the other for its failure to comply with its obligations to the extent that its compliance with its obligations is prevented by any Force Majeure Event, provided that the Party relying on the Force Majeure Event (the "**Affected Party**"):

- (a) gives written notice to the other Party, as soon as reasonably practicable on becoming aware that a Force Majeure Event has occurred, or is likely to occur, and such notice contains the following information:
 - (i) details of the Force Majeure Event;
 - (ii) the date from which the Force Majeure Event has prevented or hindered, or its best estimate of the date from which the Force Majeure Event will prevent or hinder, the Affected Party in the performance of its DPS Agreement obligations;
 - (iii) the DPS Agreement obligations so affected; and
 - (iv) its best estimate of the date upon which it shall be able to resume performance of its affected DPS Agreement obligations;
- (b) in the case of the Supplier, continues at all times to take steps in accordance with the Good Industry Practice, and uses reasonable endeavours, to resume performance of its DPS Agreement obligations so affected;
- (c) in the case of the DPS Authority, uses its reasonable endeavours to resume performance of its DPS Agreement obligations so affected;
- (d) provides at reasonable intervals updated information to the other Party on the status of the Force Majeure Event and the steps which the Affected Party has taken and is taking to resume performance of its DPS Agreement obligations so affected; and
- (e) uses its reasonable endeavours to mitigate the effects of the Force Majeure Event.

23.2 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this DPS Agreement.

23.3 Relief from liability for the Affected Party under this Clause 23 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this DPS Agreement and shall not be dependent on the serving of notice under Clause 23.2.

SECTION H – INDEMNITIES, LIABILITY AND INSURANCE

24. Limitations on Liability

Unlimited liability

24.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

24.2 The Supplier's liability in respect of the indemnities in Clause 14.3 (Employment Indemnity), Clause 14.4 (Income Tax and National Insurance Contributions) and Clause 21.4 (IPR Claim) shall be unlimited.

Financial and other limits

24.3 Notwithstanding the provisions of this Clause 24, or of this DPS Agreement generally, the Parties agree that if there is a Default by either Party during the DPS Term that relates in any way to the Services provided under a Call-Off Agreement, or the obligations contained within a Call-Off Agreement, will bring any claim, for itself or on behalf of a Service Recipient, using the provisions of that Call-Off Agreement and the claim will be subject to the limitations of liability and other provisions in that Call-Off Agreement. Claims will only be brought under the terms of this DPS Agreement if the Default specifically relates to the obligations under this DPS Agreement that are not replicated in a Call-Off Agreement. For the avoidance of doubt, if a claim can be brought under a Call-Off Agreement it cannot also be brought under the terms of this DPS Agreement.

24.4 Subject to Clauses 24.1 and 24.2 (Unlimited liability) and Clauses 24.6 and 24.7 (Consequential losses):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the DPS Authority Premises or other property or assets of the DPS Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the DPS Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £1,000,000;
- (b) the Supplier's aggregate liability in respect of all other Losses incurred by the DPS Authority or any or all Service Recipients under or in connection with this DPS Agreement as a result of Defaults by the Supplier shall in no event exceed £1,000,000,

provided that where any Losses referred to in Clause 24.4(b) have been incurred by the DPS Authority, any Service Recipient as a result of the Supplier's abandonment of this DPS Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this DPS Agreement or wilful repudiatory breach of this DPS Agreement, the reference to £1,000,000 in such Clause shall be deemed to be £2,000,000.

24.5 Subject to Clause 24.1 (Unlimited liability) and 24.6 (Consequential losses) the DPS Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this DPS Agreement shall in no event exceed £1,000,000.

Consequential losses

24.6 Subject to Clause 24.1 (Unlimited liability) and Clause 24.7, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss howsoever arising including under any indemnity; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

24.7 Notwithstanding Clause 24.6 (Consequential Losses) but subject to Clause 24.4 (Financial and Other Limits), the Supplier acknowledges that the DPS Authority may, amongst other things, recover from the Supplier the following Losses incurred by the DPS Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the DPS Authority, including costs relating to time spent by or on behalf of the DPS Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring a replacement DPS contract for the provision of Replacement Services should the DPS Authority terminate this DPS Agreement pursuant to Clause 27 (Termination by the DPS Authority);
- (d) any compensation or interest paid to a third party by the DPS Authority; or
- (e) any fine or penalty incurred by the DPS Authority pursuant to Law and any costs incurred by the DPS Authority in defending any proceedings which result in such fine or penalty.

Mitigation

24.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this DPS Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this DPS Agreement.

25. Insurance

25.1 Subject to Clauses 26.2 and 26.3 and unless otherwise confirmed in writing by the DPS Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover

per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing.

- 25.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the DPS Authority, if specified in the Call Off Agreement.
- 25.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 26.1 and 26.2 on the condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the DPS Authority in writing prior to the Commencement Date.
- 25.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this DPS Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this DPS Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 25.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 25.6 The Supplier shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the DPS Authority that insurance arrangements taken out by the Supplier pursuant to this Clause 26 and the Call Off Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 25.7 Upon the expiry or earlier termination of this DPS Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this DPS Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this DPS Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

SECTION I – SUSPENSION AND TERMINATION

26. Suspension of Supplier’s right to enter into Call-Off Agreements

- 26.1 Where the DPS Authority has the right to terminate the DPS Agreement, it can suspend the right of the Supplier to enter into Call-Off Agreements (for any period) by written notice and the Supplier cannot enter into any new Call-Off Agreements during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Agreements already entered into.
- 26.2 The suspension of the Supplier’s right to enter into Call-Off Agreements shall end when:
- (a) the Supplier has rectified the material Default(s)) where the DPS Authority has suspended the Supplier’s right to enter into Call-Off Agreements pursuant to a remediable material Default; or
 - (b) if the DPS Authority’s right to terminate arose pursuant to a material Default under Clause 35.1 or 35.2 (Prevention of Fraud and Bribery), when such material Default has been

remedied (and all necessary steps have been successfully implemented to prevent any future breach of these Clauses) to the satisfaction of the DPS Authority.

27. Termination by the DPS Authority

27.1 The DPS Authority may terminate this DPS Agreement immediately and reserves the right to remove the Supplier from the DPS without reinstatement by serving a DPS Agreement Termination Notice if:

- (a) there is a Supplier Insolvency Event;
- (b) the Supplier commits a material Default which is irremediable;
- (c) there is a material Default which is not corrected in line with an accepted Rectification Plan;
- (d) the DPS Authority rejects any Rectification Plan or the Supplier fails to provide one within eight (8) Working Days of any request;
- (e) there is a Default of Clause 17, 19, 22.2(c), 35, or 45 relating to the DPS Agreement or any Call-Off Agreement as relevant;
- (f) there is a consistent repeated failure to meet the key performance indicators for any Call Off Agreement;
- (g) there is a change of Control of the Supplier which is not pre-approved in writing by the DPS Authority;
- (h) the DPS Authority discovers that the Supplier was in one of the situations in Regulation 57(1) or 57(2) at the time the DPS Agreement was awarded;
- (i) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union ("TFEU") to declare that the DPS Agreement should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations; or
- (j) the Supplier or its Affiliates embarrass or bring the DPS Authority into disrepute or diminish the public trust in them;

27.2 The DPS Authority may exercise its right of termination under this Clause 27 without first attempting to resolve a Dispute under Clause 43 or, where such attempted resolution is in progress, without awaiting its final outcome.

27.3 If there is a Default, the DPS Authority can, without limiting its other rights, request that the Supplier provide a plan to rectify the Default.

28. Termination by the Supplier

28.1 The Supplier can terminate this DPS Agreement by giving the DPS Authority no less than 90 days written notice.

29. Consequences of Expiry or Termination

29.1 The expiry or termination of this DPS Agreement in accordance with Clause 27 (Termination by the DPS Authority) shall not affect the accrued rights of any Party.

29.2 On expiry or the earlier termination of this DPS Agreement:

- (a) each Party shall cease to use any of the other Party's Confidential Information (including any use by the Supplier of DPS Authority Data); and
- (b) the Supplier shall, at the DPS Authority's direction, provide the DPS Authority and/or the Replacement Supplier with a complete up to date and uncorrupted version of all DPS Authority Data in electronic form in a format and on media agreed with the DPS Authority.

29.3 On the earlier of:

- (a) the receipt of the other Party's written instructions after the date of expiry or termination of this DPS Agreement; or
- (b) 12 months after the date of expiry or termination of this DPS Agreement,

each Party shall destroy all copies of the other Party's Confidential Information (including, if applicable, DPS Authority Data) and promptly provide written confirmation to the other Party that such data has been destroyed save that the DPS Authority acknowledges and agrees that the Supplier shall, where destruction must occur in accordance with:

- (c) Clause 29.3(a), regardless of when such written instructions are provided, erase within 4 months from receipt of the DPS Authority's written instructions; or
- (d) Clause 29.3(b), erase within 16 months after the date of expiry or termination of this DPS Agreement,

from any back-up/archive computers, back-up archive storage devices and Storage Media that are retained by the Supplier after the expiry or termination of this DPS Agreement all shadow and back-up copies of the DPS Authority's Confidential Information.

29.4 Clause 29.3 shall not apply to any copies of the Confidential Information of the DPS Authority or any DPS Authority Data which the Supplier is required to keep by Law or this DPS Agreement.

29.5 The provisions of Clauses 14 (Supplier Personnel), 17 (Confidentiality), 18 (Freedom of Information), 19 (Protection of Personal Data) 22 (Warranties), (Conduct of Indemnity Claims), 24 (Limitations on Liability), 25 (Insurance), 29 (Consequences of Expiry or Termination), 33 (Waiver and Cumulative Remedies), 36 (Severance), 39 (Entire Agreement), 41 (Third Party Rights), 43 (Disputes) and 44 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions) and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive expiry or the termination of this DPS Agreement.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

30. Corporate Social Responsibility

DPS Authority expectations

30.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government ("**Code**"). (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)

30.2 The Supplier shall use reasonable endeavours to:

- (a) meet the standards set out in the Code; and

- (b) comply with the standards set out in this Clause 30.

Equality and Accessibility

30.3 In addition to legal obligations, the Supplier shall support the DPS Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:

- (a) eliminate discrimination, harassment or victimisation of any kind; and
- (b) advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

Modern Slavery, Child Labour and Inhumane Treatment

30.4 The Supplier:

- (a) shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier Personnel and shall ensure that its Sub-contractors do not require their workers or employees to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the term of this DPS Agreement and each Call-Off Agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this DPS Agreement or any Call-Off Agreement;
- (h) shall prepare and deliver to the DPS Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Clause 30.4;
- (i) shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;

- (j) shall not use or allow child or slave labour to be used by its Sub-contractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the DPS Authority, and Modern Slavery Helpline.

Income Security

30.5 The Supplier shall, in relation to Supplier Personnel who are employed by the Supplier:

- (a) ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- (b) ensure that all Supplier Personnel are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment;
- (c) provide all workers with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- (d) not make deductions from wages:
 - (i) as a disciplinary measure
 - (ii) except where permitted by law; or
 - (iii) without expressed permission of the worker concerned;
- (e) record all disciplinary measures taken against Supplier Personnel; and
- (f) ensure that Supplier Personnel are engaged under a recognised employment relationship established through national law and practice.

Working Hours

30.6 The Supplier shall, in relation to Supplier Personnel who are employed by the Supplier:

- (a) ensure that the working hours of Supplier Personnel comply with national laws, and any collective agreements;
- (b) that the working hours of Supplier Personnel, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- (c) ensure that use of overtime used responsibly, taking into account:
 - (i) the extent;
 - (ii) frequency; and
 - (iii) hours worked;

by individuals and by the Supplier Personnel as a whole.

30.7 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Clause 30.8.

- 30.8 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
- (a) this is allowed by national law;
 - (b) this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
 - (c) appropriate safeguards are taken to protect the workers' health and safety; and
 - (d) the Supplier can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

30.9 All Supplier Personnel shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

Sustainability

30.10 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

31. Official Secrets Act and Finance Act

31.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

32. Assignment and Novation

32.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this DPS Agreement without the prior written consent of the DPS Authority.

32.2 The DPS Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this DPS Agreement and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the DPS Authority,

(any such body, a "**Successor Body**") on reasonable notice to the Supplier save that the DPS Authority shall be required to obtain the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed, or subject to unreasonable conditions) where such body is a Competitor of the Supplier, and the Supplier shall, at the DPS Authority's request, enter into a novation agreement in such form as the DPS Authority shall reasonably specify in order to enable the DPS Authority to exercise its rights pursuant to this Clause 32.2.

32.3 A change in the legal status of the DPS Authority such that it ceases to be a Central Government Body shall not affect the validity of this DPS Agreement and this DPS Agreement shall be binding on any successor body to the DPS Authority.

33. Waiver and Cumulative Remedies

- 33.1 The rights and remedies under this DPS Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this DPS Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 33.2 Unless otherwise provided in this DPS Agreement, rights and remedies under this DPS Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

34. Relationship of the Parties

Except as expressly provided otherwise in this DPS Agreement, nothing in this DPS Agreement, nor any actions taken by the Parties pursuant to this DPS Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

35. Prevention of Fraud and Bribery

- 35.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the DPS Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 35.2 The Supplier shall not during the term of this DPS Agreement or any Call-Off Agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the DPS Authority or any Service Recipient or any employees, consultants, contractors, sub-contractors or agents of the same to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 35.3 The Supplier shall during the term of this DPS Agreement and any Call-Off Agreement:
- (a) establish, maintain and enforce, and require that its Key Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under Clause 35.3(a) and make such records available to the DPS Authority, and Service Recipients on request.
- 35.4 The Supplier shall immediately notify the DPS Authority and any relevant Service Recipient (together the "**Concerned Parties**") in writing if it becomes aware of any breach of Clause 35.1 and/or 35.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this DPS Agreement or any Call-Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this DPS Agreement or any Call-Off Agreement has committed or attempted to commit a Prohibited Act.

35.5 If the Supplier makes a notification to the Concerned Parties pursuant to Clause 35.4, the Supplier shall respond promptly to the Concerned Parties' enquiries, co-operate with any investigation, and allow the Concerned Parties to Audit any books, Records and/or any other relevant documentation in accordance with Clause 7 (Records, Reports, Audits and Open Book Data).

35.6 If the Supplier is in Default under Clauses 35.1 and/or 35.2 the DPS Authority may by notice:

- (a) suspend the right of the Supplier to enter into Call-Off Agreements; and/or
- (b) require the Supplier to remove from performance of this DPS Agreement any Supplier Personnel whose acts or omissions have caused the Default.

35.7 Any notice served by the DPS Authority under Clause 35.6 shall specify the nature of the Prohibited Act, the identity of the Party who the DPS Authority (as applicable) believes has committed the Prohibited Act and the action that the DPS Authority has elected to take (including, where relevant, the date on which the Supplier's right to enter into Call-Off Agreements shall be suspended).

36. Severance

36.1 If any provision of this DPS Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this DPS Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this DPS Agreement shall not be affected.

36.2 In the event that any deemed deletion under Clause 36.1 is so fundamental as to prevent the accomplishment of the purpose of this DPS Agreement or materially alters the balance of risks and rewards in this DPS Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this DPS Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this DPS Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

36.3 If the Parties are unable to agree on the revisions to this DPS Agreement within 5 Working Days of the date of the notice given pursuant to Clause 36.2, the matter shall be dealt with in accordance with Clause 43.

37. Further Assurances

37.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this DPS Agreement.

38. Variation

- 38.1 The DPS Authority may propose a variation to the DPS Agreement under this Clause 39 only where the variation does not amount to a material change in the DPS Agreement or the Services.
- 38.2 The Supplier acknowledges to the DPS Authority that the requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and the Supplier's Tender response, as may be requested by the DPS Authority from time to time.
- 38.3 Any change to the Services or other variation to this DPS Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

39. Entire Agreement

- 39.1 This DPS Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 39.2 Neither Party has been given, nor entered into this DPS Agreement in reliance on any warranty, statement, promise or representation other than those expressly set out in this DPS Agreement.
- 39.3 Nothing in this Clause 39 shall exclude any liability in respect of misrepresentations made fraudulently.

40. No Legal Partnership or Agency

- 40.1 The parties are independent bodies and are not legal partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor will represent that they have, any authority to make any commitments on the other party's behalf.

41. Third Party Rights

- 41.1 A person who is not a Party to this DPS Agreement has no right under the CRTPA to enforce any term of this DPS Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the DPS Authority and, prior to giving such consent, the DPS Authority shall use its reasonable endeavours to obtain the Third Party Beneficiary's consent to enforce the Third Party Provisions on behalf of and as agent for the Third Party Beneficiary.
- 41.3 Not Used.

42. Notices

- 42.1 Any notices sent under this DPS Agreement must be in writing.
- 42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this DPS Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of Service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

42.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this DPS Agreement:

	Supplier	DPS Authority
Contact:	[insert contact]	Legal Department
Address:	[insert address]	British Tourist Authority 3 Grosvenor Gardens Victoria, London SW1W 0BD
Email Address:	[insert email address]	legal@visitbritain.org

42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

- (a) Force Majeure Notices;
- (b) DPS Termination Notice;
- (c) Termination Notices; and
- (d) Dispute Notices.

- 42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 will invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 42.6 This Clause 42 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 (other than the service of a Dispute Notice under Clause 43.1)).

43. Disputes

43.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will:

- (a) if the Dispute concerns Testing, within 10 days of a Dispute Notice from the other Party; or
- (b) for all Disputes other than those concerning Testing, within 28 days of a Dispute Notice from the other Party,

meet in good faith to resolve the Dispute.

43.2 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 43.3 to 43.4.

43.3 Unless the DPS Authority refers the Dispute to arbitration using Clause 43.4, 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/or
- (c) grant any other provisional or protective relief.

43.4 The Supplier agrees that the DPS Authority 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.

43.5 The DPS Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 43.3, unless the DPS Authority 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 43.4.

43.6 The Supplier shall continue to provide the Services to the DPS Authority in accordance with the terms of this DPS Agreement until a Dispute has been resolved.

44. Governing Law and Jurisdiction

- 44.1 This DPS Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 44.2 Subject to Clause 43 (Disputes), (including the DPS Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this DPS Agreement or its subject matter or formation.

45. Conflict of Interest

- 45.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual or potential Conflict of Interest.
- 45.2 The Supplier must promptly notify and provide details to the DPS Authority if a Conflict of Interest occurs or is expected or likely to occur.
- 45.3 The DPS Authority may terminate this DPS Agreement 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.

IN WITNESS of which this DPS Agreement has been duly executed by the Parties as follows.

SIGNED for and on behalf of the **DPS AUTHORITY**

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

SIGNED for and on behalf of the **SUPPLIER**

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

SCHEDULE 1 – DEFINITIONS

"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Annex"	extra information which supports a Schedule;
"Associate"	means the Supplier;
"Audit"	the DPS Authority's right to: <ul style="list-style-type: none"> a) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services; b) verify the Open Book Data; c) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
"Auditor"	<ul style="list-style-type: none"> a) the DPS Authority's internal and external auditors; b) the DPS Authority's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; d) HM Treasury or the Cabinet Office; e) any party formally appointed by the DPS Authority to carry out audit or similar review functions; and f) successors or assigns of any of the above;
"Awarded Supplier(s)"	means the Supplier(s) appointed to the DPS and awarded a Call Off Agreement following a Further Competition or Direct Award process;
"Breach of Security"	means the unauthorised acquisition of or access to the DPS Authority's Data by an unauthorised person that compromises the security, confidentiality, privacy or integrity of DPS Authority Data, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately;
"British Tourist Authority"	means DPS Authority;
"Call-Off Agreement"	the template contract in Schedule 4 between the DPS Authority and the Supplier (entered into pursuant to the provisions of the DPS Agreement).
"Call-Off Expiry Date"	means the date of the end of a Call-Off Agreement;
"Call-Off Period"	means the Term of the Call-Off Agreement;
"Call-Off Procedure"	means the process for awarding a Call-Off Agreement pursuant to Clause 4;

"Call-Off Start Date"	means the start date of a Call-Off Agreement;
"Central Government Body"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> 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;
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Commencement Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable in accordance with the rates detailed in Schedule 3 (Pricing) and stated in the Call-Off Agreement for the delivery of the Services;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Collaboration Agreement"	means the supplemental agreement in Schedule 5 to this DPS Agreement issued to the Awarded Supplier(s) for Lots 1 – 5 containing additional terms and conditions for Commercial Partnership Services;
"Commencement Date"	means 11 September 2023 the start date of this DPS Agreement;
"Commercial Partnership"	means the creation of a partnership arrangement pursuant to this DPS Agreement between the Awarded Supplier(s) in Lots 1 – 5 and the DPS Authority following a Further Competition/Direct Award and the award of a Call Off Agreement to generate matched funding on a 50% : 50% basis as specified in the Collaboration Agreement or Call Off Agreement;
"Commercially Sensitive Information"	the Confidential Information listed in the Call Off Agreement (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the DPS Authority that, if disclosed by the DPS Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the DPS Authority or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;

"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the DPS Authority under a Contract, in the reasonable opinion of the DPS Authority;
"Contract"	either the DPS Agreement, Collaboration Agreement, Standard Terms & Conditions for Services or Call-Off Agreement, as the context requires;
"Contract Notice"	means the notice publishing this DPS Agreement procurement opportunity in accordance with the Public Contracts Regulations 2015 in Find a Tender Service, Official Journal of the European Union and Contracts Finder
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities;
"Contribution"	the fees (exclusive of any applicable VAT) of value in kind contributions, payable by either the DPS Authority and the Supplier in accordance with the Contribution mechanism set out in Schedule 3 for the Services called off under the DPS Agreement stated in the Call Off Agreement;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	has the meaning given to it in the GDPR;
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the DPS Authority;
"Deliverables"	the Services that may be ordered under the Contract including the Documentation;
"Direct Award"	means the Call Off Procedure to award a Call Off Agreement under this DPS Agreement in the event where only one Supplier has been appointed to a relevant Lot;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Call Off Agreement Form (for the purposes of this definition the "Disaster Period");
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party;

"Dispute"	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 44 (Disputes);
"Dynamic Purchasing System (DPS)"	an electronic system that can be established to purchase the required Services
"DPS Agreement"	means this DPS Agreement established between the British Tourist Authority and the Supplier in accordance with the Public Contracts Regulations 2015 as amended by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 pursuant to the Find a Tender Notice or Contracts Finder Notice;
"DPS Authority"	means the British Tourist Authority, a statutory body incorporated under the Development of Tourism Act 1969 of 3 Grosvenor Gardens, Victoria, London SW1W 0BD;
"DPS Authority Authorised Representative"	the representative appointed by the DPS Authority from time to time in relation to the Call Off Agreement;
"DPS Authority Data"	means the information/data held owned by the DPS Authority;
"DPS Contract Change"	means a change under to the DPS Agreement pursuant to Clause 11 (Change Control);
"DPS Documentation"	means the specific documentation produced by the DPS Authority or Supplier necessary for the delivery of the Services;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
"Environmental Policy"	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the DPS Authority;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Expiry Date"	the earlier of: a) the Expiry Date stated under Clause 2; or b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
"Find a Tender Service (FTS)"	the Government's publishing portal for high value public sector procurement opportunities;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either the DPS Authority or the Supplier of its obligations arising from:

	<p>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>c) acts of a crown body, local government or regulatory bodies;</p> <p>d) fire, flood or any disaster; or</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <ul style="list-style-type: none"> • any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; • 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 <p>f) any failure of delay caused by a lack of funds;</p>
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Further Competition"	means a competitive tendering process amongst all capable Lot Suppliers conducted by the DPS Authority to award a contract(s) to the Awarded Supplier(s);
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Change in Law"	a Change in Law where the change is of a general legislative nature including taxation or duties of any sort affecting the Supplier
"Goods"	Means any such goods as are to be supplied to the DPS Authority by the Supplier (or by any of the Supplier's Sub-contractors) pursuant to or in connection with the description of goods and services set out in Schedule 2;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"HMRC"	Her Majesty's Revenue and Customs;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;

"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	<ul style="list-style-type: none"> a) in respect of a person: b) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or c) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or f) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or h) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
"Intellectual Property Rights" or "IPR"	<ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
"Invitation to Participate"	means the formal documentation issued by the DPS Authority to Suppliers in accordance with the Public Contracts Regulations 2015 to establish the DPS;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the DPS Authority in the fulfilment of its obligations under a Contract;

"IR35"	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/ir35-find-out-if-it-applies ;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of processing;
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	any Subcontractor: <ul style="list-style-type: none"> a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or b) which, in the opinion of the DPS Authority performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Commencement Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"Light Touch Regime"	means the rules set out in Regulations 74 to 77 of the Public Contracts Regulations 2015 for certain service contracts;
"Lot(s)"	means the relevant Lot(s) in Schedule 2 structured by the DPS Authority for appointed DPS Suppliers to provide the required Services;
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and " Loss " shall be interpreted accordingly;
"Month"	a calendar month and " Monthly " shall be interpreted accordingly;
"National Insurance"	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"New IPR"	a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or

	b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;
"Occasion of Tax Non-Compliance"	<p>where:</p> <p>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</p>
"Open Book Data"	complete and accurate financial and non-financial information which is sufficient to enable the DPS Authority to verify the fees already paid or payable and forecast to be paid during the remainder of the Call-Off Agreement;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	in the context of the DPS Agreement, the DPS Authority or the Supplier, and in the context of a Call-Off Agreement "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Personnel"	all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;
"Processing"	has the meaning given to it in the GDPR;
"Processor"	has the meaning given to it in the GDPR;

"Processor Personnel"	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;
"Prohibited Acts"	<ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the DPS Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the DPS Authority or other public body; or d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Protective Measures"	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures in the case of the DPS Agreement or Call-Off Schedule 7 (Security Management), if applicable, in the case of a Call-Off Agreement.
"Recipient"	the Party which receives or obtains directly or indirectly Confidential Information;
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach which shall include:</p> <ul style="list-style-type: none"> a) full details of the Default that has occurred, including a root cause analysis; b) the actual or anticipated effect of the Default; and c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts Regulations 2015 (as the context requires);
"Reimbursable Expenses"	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the DPS Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the DPS Authority otherwise agrees in advance in writing; and b) subsistence expenses incurred by Supplier Staff whilst performing the Services

	at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Related Services"	means the Services procured under DPS Lot 6 in accordance with this DPS Agreement;
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Schedules"	any attachment to a DPS Contract or Call-Off Contract which contains important information specific to each aspect of buying and selling;
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Services"	services made available by the Supplier as specified in DPS Schedule 2 (Specification) and in relation to a Call-Off Agreement;
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Special Terms"	any additional terms and conditions specified by the DPS Authority in the Call Off Agreement and incorporated into the applicable Call-Off Agreement;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the DPS Authority and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
"Specification"	the specification set out in DPS Schedule 2 (Specification), as may, in relation to a Call Agreement, be updated and supplemented;
"Standards"	any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Schedule 2 (Specification); c) standards detailed by the DPS Authority in the Call-Off Agreement or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time;

"Standard Selection Questionnaire"	means the online version of the Standard Selection Questionnaire used by the DPS Authority to appoint Supplier(s) to the relevant DPS Lot(s);
"Standard Terms"	means the Terms as stated in this DPS Agreement;
"Standard Terms & Conditions for Services"	means the supplemental agreement in Schedule 6 to this DPS Agreement issued to the Awarded Supplier(s) for Lot 6 containing additional terms and conditions for Services;
"Statement of Requirements"	a statement or specification issued by the DPS Authority detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure stated in Clause 4;
"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than a Call-Off Agreement or the DPS Contract, pursuant to which a third party: <ul style="list-style-type: none"> a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;
"Supplier"	means the Supplier appointed to the DPS Agreement by the DPS Authority to deliver the Services in accordance with this DPS Agreement, Collaboration Agreement or Standard Terms & Conditions for Services and Call Off Agreement;
"Supplier's Confidential Information"	<ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract; c) Information derived from any of (a) and (b) above;
"Supplier Personnel"	the individuals (if any) identified by the Supplier as such in the Call Off Agreement;
"Tender"	means the Supplier's formal response received by the DPS Authority during the Further Competition process;

"Term"	the two (2) year term of the DPS Agreement commencing on the Commencement Date
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Transparency Information"	the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for – <ul style="list-style-type: none"> I. any information which is exempt from disclosure in accordance with the provisions of the FOIA, and II. Commercially Sensitive Information;
"Variation"	has the meaning given to it in Clause 39 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VisitBritain"	means DPS Authority;
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Call Off Agreement;

SCHEDULE 2 – LOT SPECIFICATIONS

Lot 1 – Carriers (Airlines, Ferries, Trains, Roads) - Providing transport options to facilitate travel to and throughout Britain.

VisitBritain's focus across the next two years is to make Britain the destination of choice for Experience seekers in the biggest opportunity markets. We want to work with carrier/s to increase that consideration to visit Britain in the next 12-24 months and shift consumer perceptions towards seeing Britain as a welcoming, dynamic, diverse, sustainable and inclusive destination, prioritising regional and seasonal dispersal. We want to continue building back visitor spend as quickly as possible, and support the recovery of the UK tourism industry.

Over the next 24 months we will have various opportunities to partner with a carrier/s, targeting air/sea/rail routes from key international cities, to key British gateways, delivering high impact, innovative and best in class campaigns to our Experience Seeker audience.

Subject to applicable Government spend control approval, we estimated this budget to be £6M over the next 24 months.

Lot 2 - Intermediaries (Online Travel Agencies, Metasearch, Tour Operators & Wholesalers) – These providers allow the end user to be able to search / book tickets, packaged holidays & tours for Britain. This can be direct to consumer (B2C) or via business channels (B2B).

VisitBritain's focus across the next two years is to make Britain the destination of choice for Experience seekers in the biggest opportunity markets. We want to work with intermediaries to increase that consideration to visit Britain in the next 12-24 months and shift consumer perceptions towards seeing Britain as a welcoming, dynamic, diverse, sustainable and inclusive destination, prioritising regional and seasonal dispersal. We want to continue building back visitor spend as quickly as possible, and support the recovery of the UK tourism industry.

Over the next 24 months we will have various opportunities to partner with various intermediaries in key international markets to deliver high impact, innovative and best in class campaigns to our Experience Seeker audience.

Subject to applicable Government spend control approval, we estimated this budget to be £6M over the next 24 months.

Lot 3 - Accommodation – Offering overnight accommodation for holidays in Britain, e.g. hotels, holiday homes, B&B's, campsites & hostels.

VisitBritain's focus across the next two years is to make Britain the destination of choice for Experience seekers in the biggest opportunity markets. We want to work with accommodation providers to increase that consideration to visit Britain in the next 12-24 months and shift consumer perceptions towards seeing Britain as a welcoming, dynamic, diverse, sustainable and inclusive destination, prioritising regional and seasonal dispersal. We want to continue building back visitor spend as quickly as possible, and support the recovery of the UK tourism industry.

Over the next 24 months we will have various opportunities to partner with accommodation providers in key international markets to deliver high impact, innovative and best in class campaigns to our Experience Seeker audience.

Subject to applicable Government spend control approval, we estimated this budget to be £1M over the next 24 months.

Lot 4 - Product (attractions, experiences, airports) - Facilities or services; natural, cultural or manmade attractions, facilities, activities or services that support British holidays.

VisitBritain's focus across the next two years is to make Britain the destination of choice for Experience seekers in the biggest opportunity markets. We want to work with attractions, experiences and airports to increase that consideration to visit Britain in the next 12-24 months and shift consumer perceptions towards seeing Britain as a welcoming, dynamic, diverse, sustainable and inclusive destination, prioritising regional and seasonal dispersal. We want to continue building back visitor spend as quickly as possible, and support the recovery of the UK tourism industry.

Over the next 24 months we will have various opportunities to partner with attractions, experiences and airports in key international markets to deliver high impact, innovative and best in class campaigns to our Experience Seeker audience.

Subject to applicable Government spend control approval, we estimated this budget to be £2M over the next 24 months.

Lot 5 - Brands - Any brand (outside of tourism) where it might be mutually beneficial to partner. For example, the brand has a strong link to Britain, and audiences strongly align.

VisitBritain's focus across the next two years is to make Britain the destination of choice for Experience seekers in the biggest opportunity markets. We want to work with relevant non-tourism brands to increase that consideration to visit Britain in the next 12-24 months and shift consumer perceptions towards seeing Britain as a welcoming, dynamic, diverse, sustainable and inclusive destination, prioritising regional and seasonal dispersal. We want to continue building back visitor spend as quickly as possible, and support the recovery of the UK tourism industry.

Over the next 24 months we will have various opportunities to partner with various non-tourism brands in key international markets to deliver high impact, innovative and best in class campaigns to our Experience Seeker audience.

Subject to applicable Government spend control approval, we estimated this budget to be £1M over the next 24 months.

Lot 6 - Inbound Operators and/or Destination Management Companies (DMCs) – to assist with the planning and operational execution of familiarisation trips for key overseas travel trade personnel that holds positions of influence within organisations that see the UK, in the key inbound markets.

VisitBritain's mission is to make tourism one of the most successful and productive sectors for the UK economy. One of the main facilitators for this is to actively encourage overseas visitors to holiday in Great Britain. Our role is to drive ongoing tourism recovery and growth, by continuing to build back visitor spend as quickly as possible and supporting the industry.

Over the next 24 months VisitBritain will host educational visits to Great Britain for senior personnel and key decision makers from the most prominent and/or upcoming outbound operators, based in VisitBritain markets. These visits will serve to ensure: Great Britain continues to be featured in operator programs, new regions are discovered and experienced leading to new and further product development, opportunities for regional suppliers to meet and build 121 relationships with overseas providers.

Subject to applicable Government spend control approval, we estimate this budget to be £800,000 over the next 24 months.

SCHEDULE 3 – PRICING

[to be provided by the Supplier following a Further Competition or Direct Award]

SCHEDULE 4 – CALL OFF AGREEMENT [LOTS 1 - 5 ONLY]

This Call Off Agreement is issued in accordance with the provisions of the Commercial Partnerships & Related Services DPS Agreement. The Supplier agrees to supply the Services specified below subject to the DPS Agreement Terms & Conditions.

BTA Contract Reference:	[]
PO Number (where applicable)	[]
DPS Authority Invoicing Address:	Purchase Ledger Team BRITISH TOURIST AUTHORITY 3 Grosvenor Gardens, Victoria, London SW1W 0BD purchaseledger@visitbritain.org
Supplier Invoicing Address:	[insert supplier invoicing address]
Invoice Details:	The Supplier/DPS Authority will pay the Supplier/DPS Authority within 30 days of receipt of a valid invoice

Call Off Start Date:	[]
Call Off Expiry Date:	[]
Call Off Period:	This Call Off Agreement shall commence on the Call Off Start Date and shall continue in force until the Call Off Expiry Date.
Termination:	This Call Off Agreement may be terminated by either party by giving no less than thirty 30 days' written notice.

Campaign Title:	[]
DPS Lot(s):	[]

Contribution (cash/Vik):	[]
Activity (Specification):	[]
Region / Country for Campaign:	[]
Target Audience:	[]
Campaign Services:	[]

KPIs:	[]
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Supplier Personnel for this work:	[]
DPS Authority Representatives: (VisitBritain):	[]

Campaign Reporting & Meeting Frequency:	[]
Campaign Evaluation:	[]
Additional Fees (if applicable , but excluding VAT):	[]

Invoicing Arrangements	[]
Additional Provisions:	[]
Maximum Campaign Liability	The limitation of liability for this Call-Off Agreement is stated in Clause 10 (Exclusion & Limitation of Liability) of the Collaboration Agreement
Special Terms:	[]

APPENDIX A – UK Government International Programmatic Check List

Ensuring compliance with GCS protocols & Best Practice

The UK Government views brand safety and the appropriate context for marketing and communication messages as of paramount importance.

Transparency and accountability are key priorities for all UK Government clients, as is the adherence to best practice. Partner Agencies must ensure that Government messaging does not appear on inappropriate sites or next to inappropriate content.

Whilst the work continues to evolve this protocol, GCS' current definition of UK Government compliant use of programmatic advertising for International markets needs to be tested against the below check list.

For Partner Agencies to be able to run programmatic campaigns on the Government's behalf, all fields in the below check list must comply with Government Standards and Policy.

CHECKLIST

1. All activity must run on an Inclusion list (aka 'whitelist') basis

Our view is that the less stringent blacklist-only approach (even with verification tools) does not constitute best practice in protecting the UK Government's brand safety. We require sites to meet all the following criteria in order to be added on our brand safe Inclusion List.

Please tick as appropriate

	Yes	No
Do any of the websites/apps on your Inclusion List contain any unsafe or questionable content from the topics below or anything else flagged as a sensitive topic:		
Adult Content (GCS compliant requirement = 'No')		
Drugs (No)		
Hate Speech (No)		
Gambling (No)		
Illegal Downloads (No)		
Offensive Language (No)		
Violent Content (No)		
Religion (No)		

Politics (No)		
Weapons (No)		
User Generated Content (No)		
Military (No)		
Tobacco (No)		
Other Sensitive or Offensive Content (please specify)		
Do the websites/apps on your Inclusion List have a clean, uncluttered design and layout (GCS compliant requirement = 'Yes')		
Do the websites/apps on your Inclusion List have an appropriate ad-to-content ratio (Yes)		
Do the websites/apps on your Inclusion List adhere to coalition for better ads formats (Yes)		
Are the websites/apps used on your Inclusion List authentic as verified by 3rd party verification (Yes)		
Are the websites/apps used on your Inclusion List clear of any significant history of fraud (3rd party verified) (Yes)		
Do the advertising placements load correctly on all pages across all websites/apps on your Inclusion List (Yes)		
Please confirm with a Yes or No whether your programmatic buy is based on an Inclusion (as opposed to Exclusion list)		

2. Content Verification settings

For campaigns run through Partner Agencies, relevant brand safety ad fraud and viewability third party tools need to be available.

Please tick as appropriate:

	Yes	No
Please specify the Ad Verification Tools used in your campaign (at least 1 required)		
IAS		
Double Verify		
MOAT		
Other?		

Are safety levels set to the highest level possible for this campaign (GCS compliance = 'Yes')		
Has a category exclusion list been agreed with the client for this campaign (Yes)		
Has a key word exclusion list been agreed with the client for this campaign (Yes)		
Has a category and key word exclusion list been agreed with the client in <i>all relevant languages for this campaign</i> (Yes)		
Have all keywords that may potentially carry ambiguity in their tense (e.g. vote) been highlighted to the client with proposed recommendation to include or exclude (Yes)		

3. Third-party suppliers

Where a third-party supplier is being used to allow access to proprietary research to improve targeting capabilities, the third party must submit its own Inclusion list to the Partner Agency and the Partner Agency needs to do all the due diligence to confirm that the above brand safety standards are met. All third-party suppliers used should comply with the check list provided in this document.

BY SIGNING AND RETURNING THIS CALL OFF AGREEMENT:

THE SUPPLIER AGREES to enter a Call-Off Contract under the DPS Agreement with the DPS Authority to provide the Services.

The Parties hereby acknowledge and agree that they have read the Call Off Agreement and by signing below agree to be bound by this Contract.

SIGNED for and on behalf of the **DPS AUTHORITY**

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

SIGNED for and on behalf of the **SUPPLIER**

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

CALL OFF AGREEMENT [LOT 6 ONLY]

This Call Off Agreement is issued in accordance with the provisions of the Commercial Partnerships & Related Services DPS Agreement. The Supplier agrees to supply the Services specified below subject to the DPS Agreement Terms & Conditions.

BTA Contract Reference:	
PO Order Number:	[]
DPS Authority Invoicing Address:	Purchase Ledger Team BRITISH TOURIST AUTHORITY 3 Grosvenor Gardens, Victoria, London SW1W 0BD purchaseledger@visitbritain.org

Call Off Start Date:	[]
Call Off Expiry Date:	[]
Call Off Period:	This Call Off Agreement shall commence on the Call Off Start Date and shall continue in force until the Call Off Expiry Date.
Termination:	This Call Off Agreement may be terminated by either party by giving no less than thirty 30 days' written notice.

Service Title:	[]
DPS Lot:	Lot 6
Price:	[]

(Specification):	[]
Region / Country for Event:	[]

KPIs:	[]
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Supplier Personnel for this work:	[]
DPS Authority Representatives: (VisitBritain):	[]

Additional Fees (if applicable , but excluding VAT):	[]
Invoicing Arrangements	[]
Additional Provisions:	[]

Maximum Event Liability:	
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Special Terms:	[]
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BY SIGNING AND RETURNING THIS CALL OFF AGREEMENT:

THE SUPPLIER AGREES to enter into a Call-Off Contract under the DPS Agreement with the DPS Authority to provide the Services.

The Parties hereby acknowledge and agree that they have read the Call Off Agreement and by signing below agree to be bound by this Contract.

SIGNED for and on behalf of the DPS AUTHORITY

Name:		Signature:	
Position:		Date:	

SIGNED for and on behalf of the SUPPLIER

Name:		Signature:	
Position:		Date:	

SCHEDULE 5 – COLLABORATION AGREEMENT – LOTS 1 – 5 ONLY

[attached as a separate document]

SCHEDULE 6 – STANDARD TERMS & CONDITIONS FOR SERVICES – LOT 6 ONLY

[attached as a separate document]

SCHEDULE 7 – SECURITY MANAGEMENT

1. Security Standards

- 1.1 The Supplier acknowledges that the DPS Authority places great emphasis on the reliability of the performance of the deliverables, confidentiality, integrity and availability of information and consequently on security.
- 1.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
 - 1.2.1 is in accordance with the Law and this Agreement;
 - 1.2.2 as a minimum demonstrates Good Industry Practice; and
 - 1.2.3 meets any specific security threats of immediate relevance to the Goods & Services;

2. Security breach

- 2.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 2.2 Upon becoming aware of any of the circumstances referred to in Paragraph 2.1, the Supplier shall:

immediately take all reasonable steps (which shall include any action or changes reasonably required by the DPS Authority) necessary to:

 - a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - b) remedy such Breach of Security to the extent possible and protect the integrity of the DPS Authority and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - c) prevent an equivalent breach in the future exploiting the same cause failure; and
 - d) as soon as reasonably practicable provide to the DPS Authority, where the DPS Authority so requests, full details of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the DPS Authority.
- 2.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security shall be at no cost to the DPS Authority

SCHEDULE 8 – RECORDS MANAGEMENT

1. Summary

- 1.1. This policy has been developed to provide a foundation of effective records management and file/ data retention in VisitBritain (VB) and VisitEngland (VE).

2. Scope

- 2.1. All VB and VE staff, contractors, consultants and third parties - everyone who receives, creates, maintains or has access to our documents and records is responsible for ensuring that they act in accordance with this Records Management Policy.
- 2.2. Specifically, All VB and VE staff, contractors, consultants and third parties have a responsibility for, and must be able to demonstrate compliance with, the seven data principles set out in Article 5 and 5 (2) of GDPR.
 - Personal data processed by VB and VE must be:
 - Processed lawfully, fairly and in a transparent manner
 - Collected for specific, explicit and legitimate purposes
 - Adequate, relevant and limited to what is necessary
 - Accurate and, where necessary, kept up to date
 - Retained for no longer than is necessary
 - Processed in a secure manner

For more detail on the principles please click here: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/principles/>

3. Roles and Responsibilities

- 3.1. VB/ VE General Counsel and Company Secretary, who is our appointed DPO.
- 3.2. Record Owners who are responsible for ensuring that their team understand and follow this Records Management Policy.
- 3.3. All VB and VE staff, contractors, consultants and third parties - everyone who receives, creates, maintains or has access to our documents and records is responsible for ensuring that they act in accordance with this Records Management Policy to ensure VB and VE are fully compliant with legislation and GDPR.

A full list of GDPR documents can be found on the GDPR page of the Intranet: <https://intranet.visitbritain.org/index.php/gdpr/>

4. Definitions

B2B contact is someone working for a company, public authority, agency or other body and whose contact with VB and VE is in course of the business they are

working for.

Consumer contact is an individual who is not acting in the course of a business.

Data Protection Officer (DPO) is an appointed role within VB/VE accountable for maintaining effective and efficient record keeping procedures in line with GDPR.

GDPR is legislation based on the European Union General Data Protection Regulation 2018 which seeks to empower citizens to control their personal data and to harmonise data protection regulations. The regulation contains strict rules relating to the use of personal data by organisations and provides penalties of up to €20 million or 4% of turnover, which is higher, for non-compliance.

Personal data means any information relating to an identifiable living person who can be directly or indirectly identified in particular by reference to an identifier. This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.

Personally Identifiable Information (PII) is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify a living individual.

Sensitive Personal Information (SPI) is information concerning a data subject's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation.

Record is information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.

Records Management is a process for the systematic management of all records and the information or data that they contain.

VBi is the VB/VE online image library

https://www.visitbritainimages.com/en/page/show_home_page.html

A full list of all GDPR definitions is available on the GDPR page of the Intranet:

<https://intranet.visitbritain.org/index.php/gdpr/>

5. Policy statement

- 5.1. VB and VE are fully committed to achieving high standards in records management for the effective delivery of our services and GDPR compliance. The policy has been endorsed by Board and reviewed by the Audit and Risk Committee.

6. Procedure

- 6.1. Good records management is vital to the delivery of VB and VE services in an orderly, efficient and accountable manner. By adopting this policy VB and VE

aim to ensure that the record, whatever form it takes, is accurate, reliable, ordered, complete, useful, up to date and accessible whenever it is needed and retained for no longer than is necessary.

6.2. Record Owners are responsible for adherence to this Records Management Policy

6.3. A breach of this Policy could result in account qualification while a breach involving PII or SPI data can result in a fine for the organisation of up to 4% of annual global turnover or 20 million Euro (whichever is greater). Failure by individual staff members to comply with these policies and best practice guidelines could also result in disciplinary action.

6.4. All Record Owners must review all of their Records and dispose of them routinely and in accordance with the agreed line of business retention shown in the File/Data Retention schedules below.

6.5. In a scenario where the retention periods given in this policy are longer than prescribed by local laws overseas, this policy will override local laws. If local laws stipulate longer retention periods than the ones given in this policy, then local laws must be followed.

6.6. Records must wherever possible be stored in a digital format. When Records are deleted, it should be a permanent delete completely from the system either manually or by an automated process set up in the system unless otherwise stated.

7. File / Data Retention schedule

HR / Finance / Payroll

These files are isolated from other storage systems with defined and restricted access. These files will be kept in compliance with legislated retention periods. Some anomalies exist however, e.g. CVs for unsuccessful job applicants should only be kept for 6 months unless express permission has been obtained to retain for longer.

Annual Audit Reports, Financial Statements and Corporate records

These reports, minute documents, signed minutes of the Board, annual corporate reports, and articles of incorporation are to be kept permanently.

Annual report working papers and other documents that relate to the actual annual reports (above) are to be deleted 7 years after completion.

Legal contracts

Contracts and related correspondence, including any supporting documents that relate to an appointed contract, should only be deleted 7 years after the contracts have finished.

CRM Data

The retention period will be communicated to the data subject when the data is collected. VB/VE must be able to record and quantify how and where the data was collected and for

what purpose. This is well defined as per GDPR and we have processes in place to requalify consumer contacts on a rolling 24 month basis. B2C contacts records must be deleted if data subjects fail to refresh their consent within a specified timeframe.

B2B records will be deleted if they have “Inactive” status or if they generate a bounce back in response to a VB/VE email. They will be retained if they have an attached module (i.e. accessibility guide, call, email, enquiry, evaluation, event booking, external event, media activity, meeting) or if they have one of the following flags:

- DEF

- English Partnerships
- Tourism affairs
- Business Support
- VisitEngland PR
- International Destination PR
- Business Events
- Media Contact
- For Evaluation
- Britagent Qualification
- Affiliations

- VIP

Media Files

Media files older than one year must be stored in VBi and managed by VBi in accordance with specific contracts that are in place. All copyright laws must be adhered to and any permissions sought in writing via the Legal and Procurement dept.

General Files

General business files stored on the network drives, shares and OwnCloud are to be deleted after 5 years. The main impact on the business would be referencing campaign files that are more than 5 years old, as they tend to be referenced when a similar event take place e.g. a Royal Wedding.

Complaints

Complaints from consumers and business contacts should be stored in SugarCRM and retained for 5 years. If a complaint is escalated to the Legal Team, then it becomes a legal matter and the details should be retained by the Legal Team for 7 years.

Fraud investigations

Data related to investigations of fraud, perpetrated either by staff members or external users of our services, should be retained for 7 years.

CMS

Internet, Extranet and Intranet files need to be managed and all articles posted should have an expiry date. If not refreshed or relevant, articles should expire after 4 years and be deleted.

Email

Email should be automatically deleted after 7 years. This ensures that HR, legal and finance data is retained for the correct period. This also applies to Jabber conversations, which are automatically saved to your mailbox in a folder called Cisco Jabber Chats.

Licences and Permits

As per the Legal contracts these should only be deleted 7 years after the contracts have finished.

Procurement Records

Records must be stored to provide a transparent and robust audit trail for all procurement activity to support demonstration of compliance with Public sector procurement and legislative requirements.

- All procurement contracts to be stored on the SugarCRM system.
- Where a procurement is for less than £25 000 the 3 quotes must be uploaded to the purchase order on the U4F finance system, and the reason for selection of the winning quote must be recorded on the purchase order.
- By exception we may procure small items for less than £25 000 on a credit card with the approval of the relevant Director. Three quotes must still be obtained and these, and the reason for winning quote selection must be stored on VB/VE central storage folders.
- All tenders will be conducted through the Delta system and records will be retained on that system.
- All NTA's will be stored by Procurement on their shared drive. Lists by Division will be available to the relevant Director and should be checked every six months

Table of Information Asset Retention Periods

Dept / Document type	Retention Period
Finance	Legal compliance
Procurement	Legal compliance
Legal claims /court orders	Permanent
HR General	Legal compliance
HR CVs	6 months for unsuccessful applicants
HR Performance Management	7 years after departure of staff member
Retirement and Pension records	Permanent
Payroll	Legal compliance
Audit Reports	Permanent
Audit Report supporting docs	7 years after completion
Corporate Records	Permanent
Signed Board Minutes	Permanent
Legal contracts	7 years after completion
B2C CRM records	Consumer contacts to be deleted after 24 months unless requalified.
B2B CRM records	Business contacts to be deleted after 60 months if unengaged and unused by VB/VE, but see above for more details.

Media Files	In line with VBi and copyright laws
General files	5 years
Complaints	5 years (7 if escalated to the Legal Team)
Fraud investigation	7 years
CMS files	4 years
Email files	6 months after staff departure
Licence and Permits	7 years after completion
Grant Applications/ Funding	7 years from end of year in which Grant awarded
Agreements and Claim Forms and associated documentation	