



## LIST OF CHANGES

Model Services Contract ('MSC') v2.1 from previous version (MSC v2.0)

### Key thematic updates:

- Creating a more user-friendly contract;
- Ensuring that the IPR clauses work as intended;
- In order to align with the other Standard Contracts:
  - Adding capped indemnities from the Supplier to the Buyer in relation to wilful misconduct of the Supplier / Supplier Staff that impacts the Contract; and for costs resulting from a breach of applicable Law to do with the Contract;
  - Adding *optional* capped indemnities from the Supplier to the Buyer in relation to damage / injury caused during delivery or installation of goods; and for costs arising out of recall of goods;
  - Adding a Buyer termination right so the Buyer retains the option to terminate the contract when a Supplier embarrasses or brings the Buyer into disrepute, or diminishes the public trust in the Buyer or where the Supplier made untrue and inaccurate written statements and representations in any written submissions as part of the procurement process;
- Updating as required by PPNs, particularly in respect of GDPR;
- Updating Schedule 7 (Staff Transfer) (TUPE); and
- Updating the indexation provisions.

Note: The list is divided into 'themes' for ease of use. Corrections of typos, very minor amendments, and renumbered cross-references may not be listed. We refer to the term 'Buyer' here, but the term in the MSC is the 'Authority'.

Every effort has been made to create a fulsome list of the changes at an overview level. For a full picture of the changes, and to see all relevant clause references, please see the MSC Compare Document, comparing this version 2.1 against the previous version 2.0.

Clause and paragraph numbers refer to the clauses / paras as numbered in v2.1, unless otherwise stated.

### List of changes by contract reference:

Contracts reference	Area	Change
<b>Shorter &amp; easier to use contract</b>		
<b>Throughout the contract</b>	<b>Tidying and optional split out schedules</b>	<p>Updating the MSC so that it is tidier, easier to navigate, more accessible, shorter (due to formatting), and has consistent numbering and clauses.</p> <p>Providing (i) a version of the MSC with the 32 schedules combined; and (ii) a version of the MSC with 32 separate schedules (available upon request from <a href="mailto:modelservicescontract@cabinetoffice.gov.uk">modelservicescontract@cabinetoffice.gov.uk</a>).</p>
<b>‘Supply Chain Protection’ Core Terms</b>	<b>What is required to be included in sub-contracts</b>	<p>‘Running together’ the clauses on what provisions are required to be included/the Supplier must take reasonable endeavours to try to include in sub-contracts entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Contract - depending on whether the contract was entered into before or after the start date. No changes to the content of these clauses.</p>
<b>Throughout the contract</b>	<b>Central Government Body &amp; Crown Body definitions - amalgamation</b>	<p>Deleting the definition of ‘Central Government Body’ and replacing the references to this throughout the contract.</p>
<b>IPR working as intended &amp; consistent</b>		
<b>‘Intellectual Property Rights’ &amp; signature block Core Terms, Definitions Schedule (1), Software Schedule (12), Exit Management</b>	<b>IPR</b>	<p>Making it clearer that where the Buyer is a Crown Body, the Supplier is contracting with the Crown as a whole, and adding guidance about how this interacts with IPR drafting options.</p> <p>Amending clause 17.3 of the Core Terms relating to IPR Claims, so that where a third party IPR claim is anticipated or made and if the Supplier is not able to resolve the IPR Claim, the Buyer can terminate the Contract <i>in accordance with clause 31.1</i>.</p>

Contracts reference	Area	Change
<p><b>Schedule (25) &amp; IPR Schedule (32)</b></p>		<p>In the Definitions Schedule (1), amending the definition for “Deliverable” and “Open Source”, and adding as definition of “Open Licence” (which refers to and includes Open Source)</p> <p>Updating the Exit Management Schedule (25) at clause 6.7.4 so that the Supplier does not have to return software and Authority-owned IPR to the Buyer at termination or expiry or at the end of the Termination Assistance Period, and deleting previous clause 6.10 about all licences, leases and authorisations being terminated with effect from the end of the Termination Assistance Period – as this is adequately dealt with in the IPR Schedule (32).</p> <p>Deleting (previous) Annex 1 (FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUNDS IPRS) of the Software Schedule (12).</p> <p>In the IPR Schedule (32):</p> <ul style="list-style-type: none"> <li>a) Ensuring the IPR clauses cover both software (Specially Written Software) and other types of IPR;</li> <li>b) Aligning the approach to Commercial Off The Shelf software (‘COTS’) and non-COTS, to align with the <a href="#">DDAT Playbook refresh</a>, including: <ul style="list-style-type: none"> <li>i) Providing that the Buyer gets a licence to COTs software (Supplier’s own, or a third party’s) at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available – removing the reference to these licence terms being agreed in line with Annex 1 to Schedule 12 (s a starting point, the Buyer gets the usual licence/EULA when the Supplier uses COTS, rather than extra rights to sublicense and assign and novate COTS);</li> <li>ii) The Supplier having to procure a direct licence to the COTS IPR</li> </ul> </li> </ul>

Contracts reference	Area	Change
		<p>from the third party to the Buyer, on normal commercial terms, rather than just using all reasonable endeavours to do so;</p> <ul style="list-style-type: none"> <li>iii) Giving the Buyer 10 working days to reject a Supplier's use of COTS software (its own, or a third party's), and if a Buyer does not reject in the timeframe, the Buyer will have been deemed to approve this use;</li> <li>iv) Removing the ability for the Supplier and any third party) to terminate its background non-COTS IPR licence if the Buyer materially defaults on the licence.</li> </ul> <p>c) Ensuring that under drafting 'option 1' (Buyer owns foreground IPR, Supplier has licence to this to deliver the contract only) and 'option 2' (Buyer owns foreground IPR, Supplier has licence to this to deliver the contract &amp; for commercial exploitation) the IPR licences the Buyer grants to the Supplier for foreground IPR and Buyer background IPR are effectively the same:</p> <ul style="list-style-type: none"> <li>i) In option 1, these are for the Supplier to fulfil its obligations under the contract, for the Term &amp; any Termination Assistance Period, and can be sublicensed for this purpose.</li> <li>ii) In option 2, these are for the Supplier to fulfil its obligations under the contract and to enable commercial exploitation of the foreground IPR outside the contract. These can be sublicensed for the former purpose and termination / expiry of the contract does not terminate these licences. Buyer needs to approve exploitation of these outside the contract - deemed approval applies, and the Buyer can only refuse this for harm to</li> </ul>

Contracts reference	Area	Change
		<p>reputation/interests. Adding in a clause stating that the Buyer has the right to terminate these licences if the Supplier breaches any conditions the Buyer has placed on the use of these licences;</p> <p>d) Ensuring that under drafting 'option 3' (Supplier owns foreground IPR, Buyer has licence to this for the current contract) and 'option 4' (Supplier owns foreground IPR, Buyer has licence to this for the current contract and other government purposes), the licence to Buyer background IPR is for the Supplier to fulfil its obligations under the contract and to enable commercial exploitation of the foreground IPR outside the contract. These can be sublicensed for the former purpose and termination/expiry of the contract does not terminate these licences. Buyer needs to approve exploitation of this outside the contract - deemed approval applies, and the Buyer can only refuse this for harm to reputation/interests. Adding in a clause stating that the Buyer has the right to terminate this licence if the Supplier breaches any conditions the Buyer has placed on the use of these licences;</p> <p>e) Ensuring that under drafting 'option 3' and 'option 4' the IPR licences the Supplier grants to the Buyer for foreground IPR and Supplier background IPR are effectively the same (below for the terms of the licence):</p> <ul style="list-style-type: none"> <li>i) In option 3, these are for the Term &amp; any Termination Assistance Period.</li> <li>ii) In option 4, termination/expiry of the contract does not terminate these licences;</li> </ul> <p>f) Amending the approach to the licence the Buyer receives in respect of Supplier background IPR (this is limited to non-</p>

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		<p>COTS IPR, as COTS IPR is dealt with differently - see above) so that where this is (a) embedded in a Deliverable; (b) is necessary for the Buyer to use the Deliverable, or (c) the Deliverable is a customisation or adaptation of Supplier background IPR - the Buyer gets different rights to this:</p> <ul style="list-style-type: none"> <li data-bbox="863 589 1385 920">i) In all cases* the Buyer gets a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, and worldwide licence to the Supplier background IPR. *except for 'option 3' (Supplier owns foreground IPR, Buyer has licence to this for the current contract), where this is not perpetual.</li> <li data-bbox="863 965 1385 1227">ii) Where this IPR is <u>embedded</u> in a Deliverable - Buyers / transferees / sub-licensees can use, adapt and copy this Supplier background IPR for particular purposes. There are no restrictions on the identity of any transferee or sub-licensee in this case.</li> <li data-bbox="863 1272 1385 2000">iii) Where this is <u>necessary</u> for the use of a Deliverable or the Deliverable is a <u>customisation or adaptation</u> of Supplier background IPR - Buyers / transferees / sub-licensees can use, copy, but not adapt, disassemble or reverse engineer this Supplier background IPR for particular purposes. It is transferable to a Crown Body, or any body that takes over the Buyer's functions, or any body that is not a direct competitor of the Supplier (subject to, in this case, confidentiality undertakings). It is also sub-licensable to a replacement supplier, subject to confidentiality undertakings. These confidentiality undertakings can be either with the Supplier, in the form of the Confidentiality Undertaking annexed to Schedule</li> </ul>

Contracts reference	Area	Change
		<p>12, or an agreement with the Buyer on terms equivalent to clause 19 Core Terms (Confidentiality).</p> <p>iv) The purposes this can be used for are:</p> <ol style="list-style-type: none"> <li>1) In 'option 1' and 'option 2 - (a) to allow the Buyer or any End User to receive and use the Deliverables; (b) to allow the Buyer to commercially exploit the foreground IPR and foreground IPR Items; (c) for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.</li> <li>2) In option 3 - to allow the Buyer or any End User to receive and use the Deliverables.</li> <li>3) In option 4 - (a) to allow the Buyer or any End User to receive and use the Deliverables; (b) for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function;</li> </ol> <p>g) Amending the approach (across all options) to the licence the Buyer receives in respect of any background third party IPR (this is limited to non-COTS IPR, as COTS IPR is dealt with differently - see above), so that either (a) the owner of the third party IPR grants a licence to the Buyer equivalent to the licence the Buyer gets from the Supplier for Supplier background IPR (see above for the terms of this licence); or - if the Supplier cannot, after commercially reasonable</p>

Contracts reference	Area	Change
		<p>endeavours get that licence - (b) the Supplier tells the Buyer what alternative licence terms are available from the third party/other third parties and the Buyer accepts this and gets a direct licence from that third party; or (c) the Buyer gives authorisation to use third party IPR without a licence;</p> <p>h) Ensuring coherent provisions for publication of the foreground IPR as open licence by the Buyer if it wishes to under 'option 1' (Buyer owns foreground IPR, Supplier has licence to this to deliver the contract only), including removing the indemnity in respect of this, as it is covered by the existing Supplier indemnity to the Buyer for third party IPR claims;</p> <p>i) Moving clauses on the Buyer requiring detailed exploitation information including business plans and financials, and on clawback of any foreground IPR if not exploited by the Buyer to 'option 5' (Royalties) (not to be used when 'option 2' also used). Retaining clauses in options 3-5 on requiring some information to be provided about foreground IPR exploitation; and</p> <p>j) Amending 'option 5' (Royalties) so that the Buyer gets royalties upon Supplier exploitation, if this option is used. Providing a formula for their calculation and provisions around payment and supporting records. If required, the Parties may need to enter into additional agreements/variations in line with this royalties provision.</p>
<b>Alignment of indemnities</b>		
<b>'Protection of Personal Data' &amp; 'Financial and other limits' Core Terms</b>	<b>Indemnity from Supplier to Buyer in relation to Data Protection – liability v</b>	Amending the capped Supplier liability in favour of the Buyer for any Losses incurred if the Supplier breaches the data protection clauses or any Data Protection Legislation, so this is an indemnity instead. The existing liability caps will



Contracts reference	Area	Change
	indemnity	<p>apply.</p> <p>Making clear that the indemnity at clause 21.1 only applies to the Supplier's breaches - i.e. the Supplier would not be expected to indemnify if loss arose due to Buyer breach.</p>
<b>Supply of Goods &amp; 'Financial and other limits' Core Terms</b>	<b>Indemnity from Supplier to Buyer in relation to delivery of Goods</b>	Aligning the MSC with the Short Form (and Mid-Tier) by including (on an <u>optional</u> basis) capped indemnity from the Supplier to the Buyer in respect of any Loss or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.
<b>'Supply of Goods &amp; 'Financial and other limits' Core Terms</b>	<b>Indemnity from Supplier to Buyer in relation to recall of Goods</b>	Aligning the MSC with the Short Form and Mid-Tier by including a capped indemnity from the Supplier to the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods, on an <u>optional</u> basis.
<b>'Warranties' &amp; 'Financial and other limits' Core Terms</b>	<b>Indemnity from Supplier to Buyer in relation to wilful misconduct of staff</b>	Aligning the MSC with the Short Form and Mid-Tier by including a capped indemnity from the Supplier to the Buyer in respect of wilful misconduct of the Supplier, Subcontractor and Supplier Personnel that impacts the Contract. Removing the reference to "wilful default" in the liability cap at clause 23.4, as this will be dealt with in the new indemnity. The higher suggested cap of [200%] is to apply to this indemnity.
<b>Warranties &amp; 'Financial and other limits' Core Terms</b>	<b>Indemnity from Supplier to Buyer in relation to breaches of applicable law</b>	Aligning the MSC with the Short Form and Mid-Tier by including a capped indemnity from the Supplier to the Buyer against any costs resulting from any Supplier breach of applicable Law to do with the Contract.

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
<b>Alignment of Buyer termination provisions</b>		
<b>“Supplier Termination Event” Definitions Schedule (1)</b>	<b>Buyer termination right - embarrassment, disrepute or diminishing public trust</b>	Adding in a Buyer termination right, so that the Buyer can terminate the Contract where “the Supplier or its Affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them”.
<b>“Supplier Termination Event” Definitions Schedule (1)</b>	<b>Buyer termination right - untrue and inaccurate written statements and representations in any written submissions made by the Supplier as part of the procurement process</b>	Adding in a termination right, so the Buyer can terminate where the Supplier made untrue and inaccurate written statements and representations in any written submissions as part of the procurement process.
<b>TUPE / Staff Transfer</b>		
<b>Staff Transfer Schedule (28)</b>	<b>Relevant Transfer Dates</b>	Amending the references throughout the schedule from “the” Relevant Transfer Date(s) to “any” Relevant Transfer Date(s) and from “the Effective Transfer Date” to “the relevant Relevant Transfer Date”.
<b>Staff Transfer Schedule (28)</b>	<b>Reg 10 Employment Regulations</b>	Amending the references to Reg 10(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 throughout the schedule to Reg 10.
<b>Staff Transfer Schedule (28)</b>	<b>Part D – Pensions is to apply if unexpected transfers</b>	In Parts A, B, and C, amending the provisions dealing with unexpected transfers, by extending the requirement that the new employer comply with applicable law, to also include the new employer complying with the “provisions of Part D (Pensions) and its Annexes”, including New Fair Deal.

Contracts reference	Area	Change
<b>Staff Transfer Schedule (28)</b>	<b>Part C – no staff transfer expected</b>	Amending the references throughout the schedules from “No Staff Transfer On Start Date” to “No Staff Transfer <i>Expected</i> On Start Date”, as well as any reference to agreeing that there “will not” be a relevant transfer to “is not expected to be” a relevant transfer.
<b>Staff Transfer Schedule (28)</b>	<b>Reflecting changes to statement of practice, paper, or other guidance in the contract</b>	Rewording the provision dealing with changes to a relevant statement of practice, paper, or other guidance (to include Cabinet Office Statement of Practice on Staff Transfers, the Fair Deal and/or the New Fair Deal) and how these are reflected in the contract via the change control procedure, so that instead of stating that “Any changes embodied in” replacements to these documents will be agreed in accordance with the change control procedure, it states that “Any changes necessary to this Contract as a result of changes to, or any replacement of” these documents with be changed in accordance with the change control procedure.
<b>Part A, Staff Transfer Schedule (28) &amp; Guidance</b>	<b>Civil Service Compensation Scheme to apply</b>	Including in Part A (first generation outsourcing TUPE transfers) a clause stating that “The Supplier acknowledges, in respect of those Transferring Authority Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme (“CSCS”) immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.”  Adding guidance to the MSC Guidance document on the CSCS.
<b>Part B, Staff Transfer Schedule (28)</b>	<b>Identification of transferring former supplier employees in Part B</b>	Deleting the references to “the Authority” [not] identifying transferring former supplier employees, where Part B deals with employees transferring unexpectedly, and the resulting obligations and indemnities.

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
<b>Part B, Staff Transfer Schedule (28)</b>	<b>Reg 13(4) Employment Regulations</b>	Amending the reference to “Reg 13” of the Transfer of Undertakings (Protection of Employment) Regulations 2006 to “Reg 13(4)” in para 3.1.8 of Part B.
<b>“Admission Agreement” Definitions Schedule (1) &amp; Part D, Staff Transfer Schedule (28)</b>	<b>Definition of Admission Agreement</b>	<p>Amending the definition of Admission Agreement at para 1 of the Staff Transfer Schedule by replacing the current definition with “either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires,” so it aligns with how it is defined in Part D.</p> <p>Removing this definition in para 1 of Part D of the Staff Transfer Schedule, to avoid repetition.</p> <p>Amending this definition in the Definitions Schedule, referring to Part D, rather than Part A or B of the Staff Transfer Schedule.</p>
<b>Part D, Staff Transfer Schedule (28)</b>	<b>Definition of Fair Deal Employees</b>	Amending the definition of Fair Deal Employees, by fixing the formatting, so it is clear the final sentence (“who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Authority”) applies to each of (a)-(d) of the definition.
<b>Annex D1 Staff Transfer Schedule (28)</b>	<b>Definition of CSPA</b>	Amending the definition of CSPA by replacing the start of the definition “the Principal Civil Service Pension Scheme” with “The “Alpha” pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014” and deleting the reference to “and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014” at the end of the definition.
<b>Part E, Staff Transfer Schedule (28)</b>	<b>Definition of DPA</b>	Updating the reference from “DPA” to “DPA 2018”.
<b>Annex D3, Staff Transfer Schedule (28)</b>	<b>LGPS Admission Agreement - timing</b>	Amending the clause around the Supplier becoming a LGPS Admission Body, by making it clear that if required, the Supplier will need to enter into an LGPS Admission Agreement “with effect from” the Relevant Transfer Date to enable

Contracts reference	Area	Change
		the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS.
<b>Para 1.6, Part E, Staff Transfer Schedule (28)</b>	<b>Suppliers and subcontractors providing TUPE information about way in which services organised</b>	Updating the clause requiring suppliers and subcontractors to provide information to the Buyer on exit relating to the manner in which the Services are organised by: <ul style="list-style-type: none"> <li>a) Requiring this information to be provided within 20 working days;</li> <li>b) Amending sub-paras 1.6.1, 1.6.2, and 1.6.4 so they refer to “Supplier Personnel” rather than “employees”&amp; including a guidance note at the start of Part E to explain this change.</li> </ul>
<b>Part E Staff Transfer Schedule (28)</b>	<b>New clauses - aligning to future delivery models – avoiding split contracts</b>	Inserting a new clause in Part E stating that “From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2, and 1.1.3 the Supplier agrees that following a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.  Inserting a new clause in Part E stating that “Any changes necessary to this Contract as a result of alignment referred to in [the above Para] shall be agreed in accordance with the Change Control Procedure.”
<b>Para 1.7, Part E Staff Transfer Schedule (28) &amp; Guidance</b>	<b>Additional information about transferring employees to ensure smooth transition and employees being paid</b>	Adding two additional sub-paras so that the Supplier must also provide (for each transferring employee) (a) a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee; and (b) a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998 to the Buyer/Replacement Supplier.  Adding guidance to the MSC Guidance document on the ICO TUPE Guidance.

Contracts reference	Area	Change
<b>Part E, Staff Transfer Schedule (28); MT: Part E optional Staff Transfer Schedule (7)</b>	<b>Obligations at relevant transfer date</b>	<p>Amending the time periods for the obligations and indemnities given by the [Former] Supplier in Part E, so that these apply up until (but excluding) the Relevant Transfer Date, since the obligations and indemnities given the [Replacement] Supplier are from and including the Relevant Transfer Date in the remainder of the Schedule.</p> <p>Similarly, Amending the time periods relating to the Replacement Supplier indemnification of the Supplier for financial obligations (e.g. HMRC claims, PAYE and NI contributions), making it clear that this only relates to these financial obligations arising “on and” after the transfer date.</p> <p>Amalgamating para 2.2 and (previous) para 2.10 in Part E as these are essentially the same. Para 2.10 will be deleted and any additional wording carried over to para 2.2.</p> <p>Referring to “Statutory Schemes” rather than “Schemes” as this is the defined term.</p>
<b>Annex E2 Staff Transfer Schedule (28) &amp; Guidance</b>	<b>Employee information template – age / DOB</b>	<p>Updating the template table in Annex E2 for employee details/information by amending the “age” category to “date of birth”.</p> <p>Adding guidance to the MSC Guidance document on the ICO TUPE Guidance.</p>
<b>“Supplier Termination Event” Definition Schedule (1)</b>	<b>Definition of Supplier Termination Event - TUPE related</b>	<p>Amending the definition of “Supplier Termination Event” so that it covers “any failure by the Supplier to enter into or to comply with an Admission Agreement under Part D” of the Staff Transfer Schedule, rather than “the Annex to either Part A or Part B” of this Schedule 28.</p>
<b>Sourcing Playbook &amp; associated Guidance Notes updates</b>		
<b>Standards Schedule (4)</b>	<b>Supplier Code of Conduct update</b>	<p>Updating the references to the <a href="#">Supplier Code of Conduct</a> in the contract to refer to the most</p>

Contracts reference	Area	Change
		recent version of the Code (v3).
<b>Charges and Invoicing Schedule (15) &amp; Guidance document</b>	<b>Index referred to; Indexation included</b>	<p>Amending the indexation clauses by replacing the reference to 'CPI' with a reference to inserting an appropriate index / indices so that Buyers can insert an appropriate index.</p> <p>Updating the indexation guidance in the MSC about the use of appropriate indices, including referring to the updated <a href="#">Sourcing Playbook</a>.</p>
<b>Charges and Invoicing Schedule (15)</b>	<b>What happens if index is revised / missing</b>	<p>Adding some wording into the indexation section to align with the Mid-Tier. This wording covers what happens if an index is (a) updated (for example, due to it being provisional): indexation calculation shall also be updated unless the Buyer and the Supplier agree otherwise and; (b) if an index is no longer published: the Buyer and the Supplier shall agree an appropriate replacement index which shall cover to the maximum extent possible the same economic activities as the original index.</p>
<b>Charges and Invoicing Schedule (15)</b>	<b>Adjustments for deflation</b>	<p>Amending the wording in the Charges Schedule referring only to 'increases' for indexation, to make it clearer that 'decreases' will also be adjusted for - referring to 'adjustment' instead.</p>
<b>Charges and Invoicing Schedule (15)</b>	<b>Reference period for index changes</b>	<p>Amending the wording allowing for a period during which Indexation will not occur, which refers to indexation not occurring until the 1st April on second April following the Effective Date, and the adjustment occurring every 1st April after this. Aligning this with the approach in the Mid-Tier, so it states that charges are "not to be indexed for [insert number] years following the Operational Service Commencement Date" (the "Non-Indexation Period"). Removing the reference to the 1 April date in the annual adjustments part, so this remains annual but does not reference the April date.</p> <p>Amending the wording in the stating that adjustments will be made by multiplying the relevant amount or sum by the percentage increase or changes in the in the relevant selected index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date, replacing this with</p>

Contracts reference	Area	Change
		Indexation occurring annually on the anniversary of the Operational Service Commencement Date, with it first occurring 12 months after the end of the Non-Indexation Period by reference to the 12 months following the end of the Non-Indexation Period.
<b>Guidance document</b>	<b>Guidance on indexation</b>	Including some guidance in the contract that OBCM can be a helpful compliment to Indexation (where proportionate to use).
<b>Charges and Invoicing Schedule (15)</b>	<b>Excluding from indexation historical costs incurred but not yet recovered through charges</b>	Including wording providing that “any costs charged by the Supplier to the Buyer in respect of Supplier Assets or Buyer Assets (including capital costs and installation, maintenance and support costs) which are incurred by the Supplier prior to the relevant adjustment date but which remain to be recovered through the Charges” are not to be adjusted, and will be exempt from indexation.
<b>DDAT Playbook &amp; associated Guidance Notes updates</b>		
<b>Guidance</b>	<b>Guidance - refer to IPR Guidance Note</b>	In line with the publication of the <a href="#">IPR Guidance Note</a> with the DDAT Playbook refresh, reflecting this guidance in our IPR guidance across the contract and referring out to it.
<b>Sustainability Annex in Standard Schedule (4)</b>	<b>Guidance - Tech Code of Practice &amp; Greening Gov ICT – Sustainability</b>	In line with the <a href="#">DDAT Playbook</a> refresh, updating the guidance sections of the ‘Environmental - Further Requirements’ section of the Sustainability Schedule to refer to the #12 Tech Code of Practice (Make your technology sustainable), and Greening government: ICT and digital services strategy 2020 to 2025, as places where you might look for sustainability requirements where buying DDAT/ICT.



Contracts reference	Area	Change
PPNs		
<p><b>‘Protection of Personal Data’ Core Terms &amp; Definitions Schedule (1), Change Control Schedule (22) &amp; Processing Personal Data Schedule (31)</b></p>	<p><b>Data Protection Legislation PPN</b></p>	<p>In line with <a href="#">PPN 03/22 – Updated Guidance on Data Protection Legislation</a>, amending the data protection clauses in the contract in line with the model clauses in Annex A of that PPN.</p> <p>However, in light of Supplier and Buyer feedback, retaining the wording covering either party as Controller or Processor, the parties as Joint Controllers, and the parties as Independent Controllers, in case one of these scenarios applies, although it is rarer than Buyer as Controller and Supplier as Processor.</p> <p>Adding guidance that the Buyer will be the Controller, and the Supplier the Processor in the vast majority of cases, and Buyers must speak to their DPO if they believe another data processing scenario applies.</p> <p>Retaining the drafting covering transfers outside of the EEA, and responding to other regulatory authorities where the EU GDPR applies (see below).</p> <p>These updates include amendments to the ‘Data Protection’ Core Terms and the Data Processing Schedule (31) of the MSC, including additional clauses on instructions infringing legislation, providing assistance for DPIAs, using the term “Data Loss Event” rather than “Data Protection Breach”, the term “best endeavours” as opposed to “all reasonable endeavours” and removing the clause about the Buyer being able to revise data protection clauses on notice to the Supplier. It also covers updated section references in the DPA 2018 and removes references to the parties agreeing to take account of guidance issued by a Central Government Body.</p> <p>These updates include amendments to the Definition Schedules (1), including adding a definition of “Data Loss Event”, amending the definitions of “Joint Controllers”, “Protective Measures”, and “UK GDPR”.</p> <p>Updating the Annex to be completed by the Controller in line with Annex A - Part 2 (Schedule of Processing, Personal Data and Data Subjects) to PPN 03/22. This includes adding a section for</p>

Contracts reference	Area	Change
		<p>‘subject matter of the processing’ and more details about transfers.</p> <p>In the Change Control Procedure Schedule (22) at para 5.2, amending this clause to state, instead of the “European Economic Area”, the “UK, in the event of the Personal Data being subject to UK GDPR, or the EU, in the event of the Personal Data being subject to EU GDPR.”</p>
<p><b>‘Modern Slavery’ Core Terms</b></p>	<p><b>Modern Slavery PPN</b></p>	<p>In line with the revised Modern Slavery Procurement Guidance published with <a href="#">PPN 02/23: Tackling Modern Slavery in Government Supply Chains</a>, amending the clauses dealing with modern slavery, in line with the model clauses in Annex C of that document.</p>
<p><b>Annex 1 ‘Transparency Reports’ – Reports and Records Schedule (24)</b></p>	<p><b>Procuring Steel PPN</b></p>	<p>In line with <a href="#">PPN 04/23: Procuring Steel in Government Contracts</a>, including guidance in the transparency reports annexe about when the PPN applies, and the types of draft clauses that will need inserting in this case, to enable the Buyer to collect data and report on steel usage.</p>
<p><b>Data Protection* protection of Government Data, and Security</b></p> <p>*other than GDPR PPN, above.</p>		
<p><b>Throughout the contract</b></p>	<p><b>Exempting some Supplier Data from the definition of Government Data for certain provisions</b></p>	<p>Carving out ‘any data which is owned or licenced by the Supplier and is in the joint or independent control of the Parties’ from certain data protection provisions which use the definition of ‘Government Data’:</p> <ul style="list-style-type: none"> <li>a) the need to destroy storage media holding the Government Data.</li> <li>b) securely erasing Government Data held by the Supplier when requested to do so by the Buyer</li> </ul>

Contracts reference	Area	Change
<p><b>‘Protection of Personal Data’ Core Terms, Processing Personal Data Schedule (31) &amp; Guidance</b></p>	<p><b>Transfers of data overseas</b></p>	<p>Combining the clauses on transfers of data outside the UK under UK GDPR and transfers of data outside the EEA under EU GDPR, so that this is now contained in one clause (applicable for either party as Controller or Processor, the parties as Joint Controllers, and the parties as Independent Controllers).</p> <p>Aligning these clauses on transfers out of the EEA and UK, across all 3 contracts, and all 3 processing scenarios (either party as Controller or Processor, the parties as Joint Controllers, and the parties as Independent Controllers) - e.g. including references in each to s 119A(1) of the DPA 2018.</p> <p>Adding guidance around the use of Transfer Risk Assessments for transfers overseas.</p>
<p><b>‘Protection of Personal Data’ Core Terms &amp; Processing Personal Data Schedule (31)</b></p>	<p><b>Independent Controllers - Replacing “business contact details” with “personally identifiable information”</b></p>	<p>In the tables where details of data processing are to be recorded, in the provision for the scenario where the parties are Independent Controllers, replacing the references to “business contact details” with “personally identifiable information”.</p>
<p><b>Annex 1 - Protection of Personal Data Core Terms - Processing Personal Data Schedule (31)</b></p>	<p><b>Joint Controllers – cooperation and costs between parties</b></p>	<p>In the clause that says that when the parties are joint controllers, they must provide the other Party with full cooperation and assistance in relation to particular requests, complaints or to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation, also cross-referring to the clauses that say one party will be responsible re: Data Subject management.</p> <p>In the clause that says that when the parties are joint controllers, they must use best endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach, amending the reference to this being at the Party’s own cost, so it the cost is met by the Party at fault.</p>

Contracts reference	Area	Change
<p><b>‘Protection of Personal Data’ &amp; ‘Standard Contractual Clauses’ Core Terms &amp; Processing Personal Data Schedule (31)</b></p>	<p><b>SCCs and IDTA Annexes</b></p>	<p>Amending the MSC drafting so that Buyers can decide whether they wish to include the SCCs and IDTA Annexes to Schedule 31, or instead refer out to these on the ICO or EU Commission websites.</p> <p>Drafting amended in clause 21 of the MSC Core Terms and Schedule 31, where the annexes are referred to, to enable this optionality. Guidance provided about how to choose these options.</p> <p>Correcting a typo in the ‘Standard Contractual Clauses’ clauses of the MSC Core Terms, referring to Annex 3, rather than Annex 4 to Schedule 31.</p>
<p><b>‘Authority Data and Security Requirements’ Core Terms &amp; Security Schedule (5)</b></p>	<p><b>Protection of Government Data</b></p>	<p>Amending the requirements in the Security Schedule (5) that Government Data is to be provided in an agreed “open” format upon Buyer request - replacing this with the requirement that it must be an “agreed format (provided it is secure and readable)”.</p> <p>Amending the requirements in the Security Schedule (5) around Supplier erasure of Government Data on Buyer request, so that Suppliers must certify to the Buyer when this is completed. Stating that where Suppliers are required by Law to retain this data and therefore are not required to delete it, they may only rely on this to the extent required by Law.</p>
<p><b>Security Schedule (5)</b></p>	<p><b>Security - Other</b></p>	<p>In Security Schedule (5), including the types of Personal Data set out in Article 10 UK GDPR (personal data relating to criminal convictions and offences or related security measures based on Article 6(1)) within the “Special Category Personal Data”.</p>
<p><b>Miscellaneous</b></p>		
<p><b>New clause ‘General Provisions on Expiry and Termination’ - Core Terms</b></p>	<p><b>Consequences of termination - accumulated rights</b></p>	<p>Adding in a new clause to ensure that, where a right has accrued before termination or expiry of the Contract, that right survives, regardless of whether the clause survives termination.</p>
<p><b>“Supplier</b></p>	<p><b>Changes to</b></p>	<p>Adding the existing termination right around the</p>

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
<b>Termination Event” Definitions Schedule (1)</b>	<b>Definition of Supplier Termination Event - reflecting existing termination right for material breach of Joint Controller Agreement</b>	Supplier being in material default of a joint controller agreement into the definition of “Supplier Termination Event”.
<b>Insurance Schedule (6)</b>	<b>Insurance in the aggregate wording</b>	Inserting clauses on “Making sure you are insured to the required amount” stating that “the Supplier must ensure insurances that are stated to have a minimum limit “in the aggregate” are maintained for the minimum limit of indemnity for the periods specified in this Schedule, and that where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Deliverables and/or the Contract the Supplier shall, where such claim is likely to result in the level of cover available being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining such minimum limit of indemnity.”
<b>‘Severance’ Core Terms Contract’ Core Terms</b>	<b>Severance / invalid clauses</b>	Replacing the current clauses on severance / invalid parts of the contract with the clause “If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract”
<b>‘General Provisions on Expiry or Termination’ Core Terms</b>	<b>Clauses intended to survive termination / expiry of contract</b>	To reflect the new indemnity on the cost of recall of goods, adding this indemnity to the list of clauses surviving the end of the contract.
<b>Throughout the contract</b>	<b>Supplier entering into Contract</b>	Amending the wording within the contract so that the Contract only need be signed by one director/signatory of the Supplier. This includes changing signature blocks and referring to the contact being “entered into” rather than being “executed” by the Supplier.
<b>Change Control Schedule (22)</b>	<b>Change control - updates to</b>	Amending the Change Control Schedule (22) so that the default position is that a Change

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
	<b>contractual documents</b>	Authorisation Note and the actual drafting of a change to the contract will be drafted by the Supplier, but the Buyer may direct otherwise, meaning that the Buyer may draft these instead, if it prefers.
<b>'Definitions &amp; interpretation' Core Terms</b>	<b>Precedence wording</b>	Adding wording to the order of precedence clauses after the reference to Schedule 8 (Supplier Solution) and its Annexes (if any) - namely "unless any part of the Supplier Solution offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that part of the Supplier Solution will take precedence over the documents above."
<b>'Power of Attorney'</b>	<b>Power of Attorney</b>	Amending clause 5.13 relating to the POA granted to the Buyer, as this is required to be executed by way of deed. Amending this so that, if the Buyer requests, the Parties execute a separate deed to put this in place.
<b>Minor / Clarificatory Changes</b>		
<b>Throughout the contract</b>	<b>Minor non-substantive updates</b>	Correcting typos, removal of square brackets, updating incorrect cross-references.
<b>Throughout the contract</b>	<b>KPIs/Service Levels language</b>	Amending the wording in the contract where incorrect terminology has been used when describing KPIs/PIs/Service Levels/Service Credits etc, e.g. in the Benchmarking Schedule (17) we refer to "Target Performance Levels" rather than "Target Service Levels".
<b>Throughout Definitions Schedule (1)</b>	<b>Definitions</b>	Amending the definitions in the contract as required, to reflect all of these changes and otherwise as required, e.g. adding in a definition of "Recall" - "a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance", as a result of the insertion of the indemnity from the Supplier to the Buyer in relation to Recall of Goods.

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
		[Note - some of these types of definitions may be mentioned elsewhere in the table].
<b>“Contract” Definitions Schedule (1)</b>	<b>Adding ‘Contract’ definition</b>	We have added a definition of “Contract” to the MSC, namely “the contract between the Authority and the Supplier.”
<b>“Supplier Termination Event” Definitions Schedule (1)</b>	<b>Supplier Termination Event definition - Critical Performance Failure</b>	Amending the first limb (Critical Performance Failure) of the definition Supplier Termination Event by adding “in accordance with Clause 7.6” at the end.
<b>“Law” Definition Schedule (1)</b>	<b>Law definition - Retained EU Law (Revocation and Reform) Act</b>	Amending the definition of “Law” to refer to statutes/statutory provisions that may be replaced as a result of the Retained EU Law (Revocation and Reform) Act.
<b>“Crown Body” Definitions Sch</b>		
<b>Key Personnel Schedule (29) &amp; Guidance throughout Staff Transfer Schedule (28)</b>	<b>Replacing reference to Start Date with Effective Date</b>	Replacing the references to the Start Date with Effective Date.
<b>Throughout the contract</b>	<b>Replacing reference to Operational Services Commencement Date with Operational Service Commencement Date</b>	Replacing the references to the Operational Services Commencement Date with Operational Service Commencement Date.
<b>Throughout the contract</b>	<b>Replacing gendered terminology</b>	Amending use of “his/her” to “they/them” wording throughout the contract.
<b>Reports and Records Schedule (24)</b>	<b>Updating Virtual Library</b>	Amending Annex 3 of the Reports and Records Schedule so as to reflect the above changes.
<b>Throughout all guidance documents &amp; contract</b>	<b>Guidance</b>	Amending the guidance documents for the contract, and the guidance in the contract itself, so as to reflect the above changes and otherwise as required, e.g. adding in some guidance for

<b>Contracts reference</b>	<b>Area</b>	<b>Change</b>
		Buyers to consider whether any subcontractors processing personal data should be designated as a key subcontractor, updating the guidance around the Rose Book: Guidance on knowledge asset management in government
<b>MSC Scottish version (separate contract)</b>	<b>Scottish version</b>	Updating this Contract, as required, making sure that any changes reflected elsewhere in the Contract are amended for Scottish or law.