**MODULAR MODEL SERVICES CONTRACT**

**DATED** 20

**(1) [THE AUTHORITY]**

**and**

**(2) [THE SUPPLIER]**

**CONTRACT**

relating to

[ ]



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**Modular Approach to Model Services Contract**

***[Guidance: Overview of Modular MSC***

* *A Front Sheet is used to select which optional schedules apply and for contract information to be included which allows some schedules to be removed.*
* *The* ***optional Schedules*** *in the Front Sheet are:*
  + *Schedule 25 (Deed of Guarantee)*
  + *Schedule 28 (Carbon Reduction)*
  + *Schedule 29 (Authority-Specific Terms)*
* *The following schedules have been removed from the MSC because they are covered by the Front Sheet:*
  + *Schedule 9 (Commercially Sensitive Information)*
  + *Schedule 10 (Notified Key Sub-Contractors)*
  + *Schedule 11 (Third Party Contracts)*
  + *Schedule 12 (Software) - the annexes for this (template licence notice and NDA) have moved to Schedule 27.*
* ***Schedules 5 (Security Management), 22 (Service Continuity and Corporate Resolution Planning), 24 (Staff Transfer) and 27 (Intellectual Property Rights)*** *have tick boxes in the Front Sheet for the Authority to pick their options.]*

**Section 1: Date of Contract and Party Details**

|  |  |
| --- | --- |
| **Date of Contract** |  |

|  |  |  |
| --- | --- | --- |
|  | **Authority** | ***[NAME OF THE AUTHORITY]*** (the “**Authority**”) |
|  | **Authority Address** | ***[AUTHORITY ADDRESS]*** |
|  | **Supplier** | ***[NAME OF THE SUPPLIER]*** (the “**Supplier**”) |
|  | **Supplier Address** | ***[REGISTERED ADDRESS OF THE SUPPLIER]*** |

**Section 2: Introduction**

|  |  |  |
| --- | --- | --- |
|  | **Introduction** | ***[Set out description of background and objectives of the procurement - for example:***   1. ***The Authority [insert background of relevant functions of the Authority] and wishes to [insert objectives of project].*** 2. ***On [insert date] the Authority advertised on Find a Tender (reference [insert FTS number]), inviting prospective suppliers to submit proposals for the [insert description of services].*** 3. ***The Supplier is a leading provider of [insert business of Supplier] and has experience in [insert services being procured].*** 4. ***On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.*** 5. ***An outcome of the procurement is that the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.]*** |

**Section 3: Contract Particulars**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Initial Term** | The period of [x years] from and including the Effective Date (the “***Initial Term***”). | |
|  | **Extension Period** | The period of [x years] from the end of the Initial Term (the “***Extension Period***”). | |
|  | **Mandatory Schedules** | The following schedules are incorporated into this Contract: | |
| Schedule 1 (*Definitions*) | |
| Schedule 2 (*Services Description*) | |
| Schedule 3 (*Performance Levels*) | |
| Schedule 4 (*Standards*) | |
| Schedule 5 (*Security Management*) | |
| Schedule 6 (*Insurance Requirements*) | |
| Schedule 7 (*Authority Responsibilities*) | |
| Schedule 8 (*Supplier Solution*) | |
| Schedule 9 (*Implementation Plan*) | |
| Schedule 10 (*Testing Procedures*) | |
| Schedule 11 (*Charges and Invoicing*) | |
| Schedule 12 (*Payments on Termination*) | |
| Schedule 13 (*Benchmarking*) | |
| Schedule 14 (*Financial Distress*) | |
| Schedule 15 (*Financial Reports and Audit Rights*) | |
| Schedule 16 (*Anticipated Savings*) | |
| Schedule 17 (*Governance*) | |
| Schedule 18 (*Change Control Procedure*) | |
| Schedule 19 (*Dispute Resolution Procedure*) | |
| Schedule 20 (*Reports and Record Provisions*) | |
| Schedule 21 (*Exit Management*) | |
| Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*) | |
| Schedule 23 (*Conduct of Claims*) | |
| Part E (*Staff Transfer on Exit*) of Schedule 24 (*Staff Transfer*) will always apply to this Contract, including:  (a)          Annex E1 (List Of Notified Sub-Contractors)  (a)          Annex E2 (Staffing Information).  The Parts of Schedule 24 selected in Section 10 below will also apply to this Contract. | |
| Schedule 26 *(Processing Personal Data*) | |
| Schedule 27 (*Intellectual Property Rights*) | |
|  | **Optional Schedules** | [***Guidance: the following Schedules are optional. Please tick the appropriate box where the Authority wishes them to be included. If an optional schedule is not included no changes to the Contract are required and the Schedules can be omitted***]  The following schedules selected by ticking “yes” apply to this Contract. Where a Schedule is not selected, it shall not apply to this Contract. | |
| Schedule 25 (*Deed of Guarantee*)  Where Schedule 25 is selected the following Clause shall also apply and is added as a new Clause within the Core Terms at sub-clause 4.2  **Condition Precedent**   * 1. Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and* *Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the “***Condition******Precedent***”). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing or where the Authority has not selected the inclusion of Schedule 25 (*Guarantee*) in Section 3 (*Contract Particulars*) of the Front Sheet.   2. The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:      1. this Contract shall automatically cease and shall not come into effect; and      2. neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.   3. The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.3. | Yes:☐ No:☐ |
| Schedule 28 (*Carbon Reduction*) | Yes:☐ No:☐ |
| Schedule 29 *(Authority-Specific Terms)* | Yes:☐ No:☐ |
|  | Incorporated Terms  (together these documents form the **"the Contract"**) | The following documents are incorporated into the Contract.  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:  ***[Guidance: delete the highlighted Schedule 29 (Authority Specific Terms) if it is not needed for this procurement. Remove the highlighting before publication if Schedule 29 (Authority Specific Terms) is to be used.]***   1. the Front Sheet; 2. [Schedule 29 (*Authority Specific Terms*);] 3. the Clauses and Schedule 1 (*Definitions*); 4. Schedules 2 (*Services Description*) and 3 (*Performance Levels*) and their Annexes; 5. any other Schedules and their Annexes (other than Schedule 8 (*Supplier Solution*) and its Annexes); and 6. Schedule 8 (*Supplier Solution*) and its Annexes (if any) 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. | |

**Section 4: Security Management**

[***Guidance: The Authority must choose either Part A (Authority-led Assurance) or Part B (Supplier-led Assurance). The Part not used should be removed from the Contract. Please note there are further options for the Authority to consider within whichever Part is chosen by the Authority ]***

|  |  |  |
| --- | --- | --- |
| The Authority has selected the following option for Schedule 5 (*Security Management*): | Part A (*Authority-led Assurance*) | Yes:☐ No:☐ |
| Part B (*Supplier-led Assurance*) | Yes:☐ No:☐ |

**Section 5: Commercially Sensitive Information**

*[****Guidance: Any Information to be considered Commercially Sensitive shall be included in the table below*.**]

5.1 In the table below the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any PPN as well as any information that would be considered sensitive commercial information under Section 94 of the Procurement Act 2023.

**Commercially Sensitive Information**

| No. | Date | Item(s) | Duration of Confidentiality |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Section 6: Notified Key Sub-Contractors**

*[****Guidance: The Authority shall include any Key Sub-contractor as defined in Schedule 1 (Definitions) in the table below along with the relevant details applicable for each column*.**]

* 1. In accordance with Clause 15.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.
  2. The Parties agree that they will update the table below periodically to record any additional Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

| Key Sub-contractor name and address (if not the same as the registered office) | Registered office and company number | Related product/Service description | Key Sub-contract price expressed as a percentage of total projected Charges over the Term | Key role in delivery of the Services | Credit Rating Threshold |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  | [Level 1] |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**Section 7: Third Party Contracts**

*[****Guidance: The Authority shall include any Third Party Contracts as defined in Schedule 1 (Definitions) in the table below along with the relevant details applicable for each column*.**]

* 1. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
  2. The Supplier shall be entitled to update this Section 7 (*Notified Key Sub-Contractors*) in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

| Third party supplier name and address (if not the same as the registered office) | Registered office and company number | Related product/service description |
| --- | --- | --- |
|  |  |  |
|  |  |  |

**Section 8: Software**

* 1. The Software below is licensed to the Authority in accordance with Clause 16 (*Intellectual Property Rights*) and Schedule 27 (*Intellectual Property Rights*).
  2. The Parties agree that they will update the tables in this Section 8 (*Software*) regularly, and in any event no less than every 6 (six) Months from the Effective Date, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

**SUPPLIER SOFTWARE**

The Supplier Software includes the following items:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Software** | **Supplier (if an Affiliate of the Supplier)** | **Purpose** | **Number of Licences** | **Restrictions** | **Number of Copies** | **Type (COTS or Non-COTS)** | **Term/Expiry** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

**THIRD PARTY SOFTWARE**

The Third Party Software shall include the following items:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Third Party Software** | **Supplier** | **Purpose** | **Number of Licences** | **Restrictions** | **Number of Copies** | **Type (COTS or Non-COTS)** | **Term/Expiry** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

**Section 9: Corporate Resolution Planning**

***[Guidance: A Critical Service Contract is a service contract which the Authority considers should be classed as a Critical Service Contract or critical supplier contract. The Authority may choose to categorise these contracts as Gold contracts using the Cabinet Office Contract Tiering Tool, available on the Knowledge Hub.]***

|  |  |
| --- | --- |
| The Authority has selected the following option for Part B of Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*): | This Contract:  **is**: ☐  **is not**: ☐  a Critical Service Contract. |

**Section 10: Staff Transfer**

[***Guidance:******The Authority will need to take their own legal advice on Schedule 24 (Staff Transfer).***

***Whilst Parts A, B & C of the Staff Transfer Schedule are optional, the Contracting Authority is expected to choose one or more of Parts, A, B & C, and where such Part(s) have been chosen Part D will apply. In addition, the Contracting Authority will need to choose the appropriate annex(es) to Part D. Note Part D cannot apply without one or more of its Annexes being chosen. See the guidance notes at the start of Schedule 24 (Staff Transfer).***

***There may be exceptional circumstances when it is not commercially appropriate to use any of Parts A, B or C in which case Part D will not apply, if the Authority is considering this scenario specific legal advice should be taken.***

***The Authority may also consider amending Part C so that it covers Authority employees only, e.g., where Former Supplier employees are in scope to transfer on commencement but Authority employees are not in scope and therefore Part B is to apply to Former Supplier employees, Part A does not apply but Part C is modified to apply should Authority employees unexpectedly transfer. If the Authority is considering this scenario, again specific legal advice should be taken].***

Part E (*Staff Transfer on Exit*) of Schedule 24 (*Staff Transfer*) will always apply to this Contract, including:

(a) Annex E1 (*List Of Notified Sub-Contractors*)

(b) Annex E2 (*Staffing Information*).

|  |  |  |
| --- | --- | --- |
| The Authority has selected the following Part(s) of Schedule 24 (*Staff Transfer*) shall apply: | Part A: (*Transferring Authority Employees at Commencement of Services*) | Yes ☐ No: ☐ |
| Part B: (*Transferring Former Supplier Employees at Commencement of Services*) | Yes ☐ No: ☐ |
| Part C: (*No Transfer of Employees at Commencement of Services*) | Yes ☐ No: ☐ |
| Part D: (*Pensions*) | Yes ☐ No: ☐ |
| Annex D1: (*CSPS*) | Yes ☐ No: ☐ |
| Annex D2: (*NHSPS*) | Yes ☐ No: ☐ |
| Annex D3: (*LGPS*) | Yes ☐ No: ☐ |
| Annex D4: (*Other Schemes*) | Yes ☐ No: ☐ |

**Section 11: Key Personnel**

* 1. The below table lists the key roles (“**Key** **Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date (“**Key** **Personnel**”).

| Key Role | Name of Key Personnel | Responsibilities/ Authorities | Phase of the project during which they will be a member of Key Personnel | Minimum period in Key Role |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Section 12: Intellectual Property Rights**

***[Guidance: this Schedule on Intellectual Property Rights (“IPRs”) can be amended depending on how the Authority needs to arrange ownership and licencing of all Specially Written Software and Project Specific IPRs (‘Foreground IPR’) created for or pursuant to the contract.***

***See the*** [***Intellectual Property Rights Guidance Note***](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163541/IPR_Guidance_Note.pdf)***, and para 2.7 of the MSC Guidance document for further guidance on how to select an appropriate option(s). The General Provisions will apply for every Contract, no matter what option(s) is selected.***

***The options are:***

***Option 1: Authority ownership of all Specially Written Software and Project Specific IPRs with limited Supplier rights in order to deliver the Contract;***

***Option 2: Authority ownership of all Specially Written Software and Project Specific IPRs with non-exclusive Supplier rights for the Contract and for commercial exploitation;***

***Option 3: Supplier ownership of all Specially Written Software and Project Specific IPRs with Authority rights for the current contract only;***

***Option 4: Supplier ownership of Specially Written Software and Project Specific IPRs with Authority rights for the current contract and broader public sector functions;***

***Option 5: Options 2, 3, or 4, plus Authority rights to royalties***

***Option 2 should be considered for use in situations where the Authority should retain ownership of any Specially Written Software and Project Specific IPRs but where the Supplier should be able to use any Specially Written Software and Project Specific IPRs developed, subject to Authority approval. In this situation, the Authority will not look to publish the Specially Written Software and Project Specific IPRs under Open Licence.***

***Option 3 should be considered for use where (a) there is no clear benefit in the Authority owning the Specially Written Software and Project Specific IPRs, or (b) where any Specially Written Software and Project Specific IPRs created cannot easily be separated from the Supplier’s Existing IPR (e.g. Software As A Service (SAAS)), but where a licence is only needed for the current contracted service and the IPR in question will not be needed for other services.***

***Option 4 is similar to Option 3, except it should be used where the licence to the Authority for the IPR in question should extend to cover other contracts and services, which may include contracts and services not yet awarded, and broader public sector functions.***

***Option 5 should be considered if an Authority has invested significant resource or funding in the development of the project and intends to seek a return on that investment. Includes a right for the Authority to request ownership of unexploited IPR after 3 years (except when Option 2 is used).***

***Carefully check cross-references as these may need to be updated when unused clauses are deleted.***

***Once the appropriate option has been selected in the Front Sheet, please delete all unused options from Schedule 27 (Intellectual Property Rights)***

|  |  |  |
| --- | --- | --- |
| The Authority has selected the following option(s) to apply for Schedule 27 (*Intellectual Property Rights*): | Option 1:*(Authority ownership of all Specially Written Software and Project Specific IPRs, with limited Supplier rights to Specially Written Software and Project Specific IPRs in order to deliver the Contract)* | Yes ☐ No: ☐ |
| Option 2: (*Authority ownership of all Specially Written Software and Project Specific IPRs with non-exclusive Supplier rights)* | Yes ☐ No: ☐ |
| Option 3: (*Supplier ownership of all Specially Written Software and Project Specific IPRs with Authority rights for the current contract only)* | Yes ☐ No: ☐ |
| Option 4: (*Supplier ownership of all IPR with Authority rights for the current contract and broader public sector functions)* | Yes ☐ No: ☐ |
| Option 5: (*Gain Share*) | Yes ☐ No: ☐ |

**Section 13: Notices**

* 1. Notices shall be sent to the e-mail addresses set out below or at such other address (where e-mail is not practicable) as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

|  |  |  |
| --- | --- | --- |
|  | **Supplier** | **Authority** |
| **Contact** |  |  |
| **E-mail** |  |  |
| **Address** |  |  |

**Section 14: Signatures**

This Contract has been duly entered into by the Parties on the date which appears at the Section 1 of this Front Sheet.

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of)  [***name of the Supplier***] by a director: | ) ) ) )  Signature:  Name  (block capitals):  **Director** |

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of  [***name of the Authority [Insert wording where the Authority is a Crown Body: acting as part of the Crown]***] | ) ) ) ) )  Signature:  Name  (block capitals):  Position: |