



Cabinet Office

# Short Form Contract – Guidance for Buyers

**For use under the Procurement Act 2023**

**Version 1.5A (2025)**

# Contents Page

<b>Contents Page .....</b>	<b>2</b>
<b>Introduction .....</b>	<b>3</b>
<b>Contract Selection Guide.....</b>	<b>4</b>
<i>Factors to consider when choosing the right contract</i>	4
<i>Further factors to consider when choosing the right contract</i>	6
<i>Other considerations</i>	12
<b>Scope of Document .....</b>	<b>13</b>
<i>The Short Form Contract – Design and Coverage</i>	13
<i>Procurement Act 2023</i>	13
<i>What the Short Form Contract may be Used For</i>	15
<b>Drafting considerations - Goods-only Contracts.....</b>	<b>19</b>
<b>Drafting considerations - All Contracts .....</b>	<b>20</b>
<i>Extensions and Modifications</i>	20
<i>Special Terms</i>	20
<i>Intellectual Property Rights</i>	24
<i>Transparency, Subcontracting, Claims, and Termination</i>	27
<i>Public Trust and Reputation Clauses</i>	28
<b>Completion of the Cover Letter (if used), Order Form, and Annexes .....</b>	<b>29</b>
<i>Cover Letter and Order Form</i>	29
<i>The Annexes</i>	30

## Introduction

This guidance accompanies the Short Form Contract v 1.5 (2025) which has been developed by the Cabinet Office and the Government Legal Department ('GLD'). This document gives context to the clauses, annexes and the important areas for consideration. It is useful to look at this guidance document alongside the Short Form Contract when choosing a model form of contract.

This guidance is for the version of the Short Form Contract published for use under the Procurement Act 2023. If you are procuring under the Public Contracts Regulations 2015, please see the previous version of the contract (v 1.4 (2023)) and any related documents, including the guidance document.

If you have any comments about this document, please email the Cabinet Office Standard Contracts team at [modelservicescontract@cabinetoffice.gov.uk](mailto:modelservicescontract@cabinetoffice.gov.uk).

The Short Form Contract (previously known as the Short Form Terms & Conditions) is designed to complement the ever-growing suite of government contracts available for use, e.g., the Mid-Tier Contract, the CCS Public Sector Contract ('PSC'), and the Model Services Contract ('MSC'). It has been created to sit below the Mid-Tier Contract and the MSC and is intended for simple requirements that are below public procurement thresholds. The Short Form Contract is a bilateral contract (for use between two parties) for goods and/or services.

Cabinet Office will continue to encourage the public sector to use a Crown Commercial Service (CCS) commercial agreement for common goods and services requirements where appropriate.

See PPN013 – Using Standard Contracts and any later related PPNs for more detail about the use of the Short Form Contract and the other standard contracts.

## Contract Selection Guide




These tables are intended as an aid to commercial professionals in the public sector in determining the most appropriate form of standard contract for use by the public sector. Buyers should ensure the contract chosen matches the contractual requirements for their procurement. The Government Legal Department can help you decide which contract is most appropriate.

### Factors to consider when choosing the right contract










<b>Model Services Contract</b>	<b>Mid-tier Contract</b>	<b>Short Form Contract</b>	<b>Public Sector Contract or existing Framework Contract (provided by Crown Commercial Service)</b>
A set of standard terms that may act as a starting point for negotiation on complex and/or high value services	A set of fixed core terms with modular, optional schedules for non-complex services or high value goods	A set of fixed terms for less complex, lower value goods or services	A framework contract of fixed core terms with modular, optional schedules for common goods and services
<ul style="list-style-type: none"> <li>✓ Where the Supplier is capable of carrying out the significant obligations contained within it</li> <li>✓ Acquisition of services</li> <li>✓ Where contract charges exceed £20m</li> <li>✓ Where contract poses a high financial risk to the Authority</li> <li>✓ Where failed delivery of the contract poses a reputational risk to the Authority such as critical or public facing requirements</li> <li>✓ Use of a framework is inappropriate due to high level of financial or supply risks or where modifications to the contract could be substantial or a framework does not exist</li> </ul>	<ul style="list-style-type: none"> <li>✓ Where contract charges exceed the relevant procurement thresholds. Can also use for below-threshold if appropriate and proportionate</li> <li>✓ Use of a framework is inappropriate due to high level of financial or supply risks or where modifications to the contract could be substantial or a framework does not exist</li> <li>✓ Where what is being delivered is bespoke or other than business as usual</li> <li>✓ Where there is a non-complex transfer of resources (people, assets, etc) from the Authority or an incumbent Supplier to a new Supplier</li> </ul>	<ul style="list-style-type: none"> <li>✓ For the provision of non-complex goods or services.</li> <li>✓ Total contract value is below the relevant procurement thresholds. You may consider using the Short Form for some simple above-threshold procurements. See below for further guidance</li> <li>✓ Where a framework does not exist for what you want to buy</li> </ul>	<ul style="list-style-type: none"> <li>✓ When you would prefer to use a framework contract as your route to market</li> <li>✓ For the procurement of goods or services which are common across the public sector</li> <li>✓ Where a suitable framework has been set up by the Crown Commercial Service to procure those goods or services</li> <li>✓ When the appropriate contractual provisions are already drafted for you to include</li> <li>✓ Where you are an Authority listed in the framework contract notice</li> </ul>

<p>✓Where what is being delivered is highly complex, bespoke or other than business as usual</p> <p>✓Where there is a significant transfer of resources (people, assets, etc) from the Authority or an incumbent Supplier to a new Supplier</p> <p>✓Where there is a significant business service or technology transformation</p> <p>✓The requirement justifies the use of professional, commercial, legal or negotiating resources</p>			
<p>✗For construction contracts</p> <p>✗Acquisition of commodities and goods (other than where these are ancillary to a service)</p> <p>✗Where a suitable Crown Commercial Service framework exists to facilitate the procurement.</p> <p>✗For grants</p>	<p>✗For construction contracts</p> <p>✗Where (complex services) contract charges exceed £20m</p> <p>✗Where a suitable CCS framework exists to facilitate the procurement.</p> <p>✗For grants</p>	<p>✗For construction contracts</p> <p>✗For complex contracts</p> <p>✗When you need to transfer assets or people</p> <p>✗Where a suitable Crown Commercial Service framework exists to facilitate the procurement</p> <p>✗Where contract charges exceed the relevant procurement thresholds (with some exceptions)</p> <p>✗For grants</p>	<p>✗For highly bespoke requirements</p> <p>✗When you need to make modifications to the call-off contract that could be considered substantial.</p> <p>✗For grants</p>

## Further factors to consider when choosing the right contract










	<b>Model Services Contract</b>	<b>Mid-Tier Contract</b>	<b>Short Form Contract</b>	<b>Comments</b>
	A set of standard terms that may act as a starting point for negotiation on complex and/or high value services	A set of fixed core terms with modular, optional schedules for non-complex services or high value goods	A set of fixed terms for less complex, lower value goods or services	
<b>WHO CAN USE – NON-GEOGRAPHIC</b>				
For use by <b>“Contracting Authorities”</b> as defined by <b>Procurement Act 2023</b> <b>“PA2023”</b>				<p>Not to be used by 2x private parties.</p> <p>Note that the contracts reflect the requirements of relevant PPNs, which apply to all central government departments, their executive agencies and non-departmental public bodies, so the contracts may reflect additional PPN-based requirements than are technically required for other non-central government bodies/ local government (e.g., additional prompt payment requirements, carbon reduction requirements).</p>

<b>Schools</b>	 (could use with amends)	 (could use with amends)	 (could use with amends)	Could be used, but will include additional obligations that are not needed for schools so users may like to amend to remove these (e.g. implied prompt payment terms, and for the Short Form - below-threshold terms) - see <a href="#">Procurement Act 2023 Knowledge Drop for contracting authorities - schools</a>
<b>WHEN CAN BE USED – THRESHOLDS; EXEMPTIONS</b>				
For use for “public contracts” ( <u>above threshold</u> , not exempted) as defined by PA2023	 (suggested ~£20m+ TCV)	 (above-threshold to suggested ~£20m TCV)	 (only for some simple above-threshold procurements) – see below	Valuation is max payable (include options & extensions) and incl. VAT
For use for contracts ( <u>below threshold</u> , not exempted) – “procurement” as defined by PA2023		Likely  , but could be used for some more complex below-threshold procurements		
For use for “ <u>convertible contracts</u> ” (below-threshold converted into above-threshold)		 (if it is possible for contract to become convertible, consider using Mid-Tier)	Suggest using Mid-Tier, could use Short Form ‘at own risk’ (but may be missing some terms once it becomes convertible –	See guidance on convertible contracts below.

			may need to be amended)	
For use for <u>exempted procurements</u>				<p>E.g., for counterparty and subject-exempted contracts – e.g., horizontal &amp; vertical arrangements, purchase of land/building, loans financial services etc.</p> <p>Could be used, but may imply additional obligations that are not needed. There may also be some additional provisions which would be required for some of these types of transactions, e.g., for land and buildings or financial services, which would need specialist input.</p>
<b>WHEN CAN BE USED – FOR BUYING WHAT?</b>				
For buying Goods/Services when there is a <u>suitable Govt Framework</u>				Use suitable Framework instead
For use for buying (bespoke) <u>Goods</u>	 (if ancillary to services)			



For use for buying (bespoke) <u>Services</u>	✓ (especially complex outsourcing)	✓	✓	
For use for <u>Construction</u> / buying <u>Works</u>	✗	✗	✗	Use industry-specific contracts
For Concession contracts	✗	✗	✗	These contracts are not generally set up for concession contracts. They will also include additional obligations under the PA2023 that are not needed (e.g., implied prompt payment terms, and KPIs) see <a href="#">Procurement Act 2023 Knowledge Drop for contracting authorities - concession</a>
Defence & Security	✗	✗	✗	
Utilities	✗	✗	✗	
For buying under the Provider Selection Regime (PSR)	✗	✗	✗	
For use for mixed procurements	✗	✗	✗	Because not suitable for Works / or special regime contracts / or PSR buying

WHEN CAN BE USED – PROCUREMENT PROCEDURE?				
Frameworks				
Dynamic Markets				
Open			 (If using for simple above-threshold - can use for Open. If below-threshold, Buyer is not obliged to undertake a particular competitive procedure, but may choose to invite tenders).	
Competitive Flexible			 (If using for simple above-threshold - can use for Competitive Flexible. If below-threshold, Buyer is not obliged to undertake a particular competitive procedure, but may choose to invite tenders). Will need to consider proportionality.	

<b><u>Direct Award</u></b> (except User Choice contracts)	✓	✓	✓  (NB: rules in s.41-43 and the justifications in Schedule 5 PA 2023 would not be applicable for any below-threshold procurements).	
<b><u>Direct Award - User Choice</u></b> <b><u>contracts</u></b>	✗ (could use with amends)	✗ (could use with amends)	✓  (NB: rules in s.41-43 and the justifications in Schedule 5 PA 2023 would not be applicable for any below-threshold procurements).	Could be used, but will include additional obligations that are not needed for direct award - user choice contracts so users may like to amend to remove these (e.g., publishing Contract Termination Notices as a consequence of termination in the MSC & Mid-Tier)
<b>Light Touch</b>	✗ (could use with amends)	✗ (could use with amends)	✗ (could use with amends)	Could be used, but will include additional obligations that are not needed for light touch contracts so users may like to amend to remove these (e.g. KPIs) - see PA2023 Knowledge Drop for contracting authorities - <a href="#">light touch</a>
<b>WHEN CAN BE USED – GEOGRAPHY</b>				
<b>England &amp; Wales</b>	✓	✓	✓	

<b>Scotland</b>	✓ (Scottish Version of MSC only – keeps Scottish PCR provisions)	✓ (Use Scottish Schedule – effectively undoes PA2023 updates and keeps Scottish PCR provisions)	✗	Note: may need to change drafting reflecting PPNs to reflect SPPNs instead
<b>Northern Ireland ('NI')</b>	✗	✓ (Use NI Schedule)	✗	Note: may need to change drafting reflecting PPNs to reflect NI PPNs instead

## Other considerations

### Contract Tiering Tool

There is a [Contract Tiering Tool](#) (for internal Government use only) which can help classify the contract (gold / silver / bronze) by assessing three criteria: value, complexity and level of risk. This tool can also help determine the criticality and level of contract management required.

# Scope of Document

## The Short Form Contract – Design and Coverage

1. The standard Short Form Contract for goods and/or services consists of a cover letter, a contract order form (“**Order Form**”), short form terms and conditions of contract (“**Conditions**”) and annexes covering data processing, specification of the goods and/or services, charges, any Supplier tender, alternative optional intellectual property rights (“**IPR**”) clauses and security management. It has been designed for use by all Government Departments and Executive Agencies<sup>1</sup> when procuring non-complex deliverables (generally below the procurement thresholds found in the Procurement Act 2023).<sup>2</sup> While originally designed for below-threshold procurements, this Contract may be used where appropriate for some simple above-threshold procurements. See below for further details. If there is an existing Crown Commercial Service (“**CCS**”) agreement for your procurement, you may wish to consider using that instead.

## Procurement Act 2023

2. The 2025 updates to this Contract to align with the Procurement Act 2023 include updated transparency, termination, conflicts of interest, exclusions, and prompt payment provisions. We have also updated legislative references and language such as replacing references to “Contracts Finder” with “Find a Tender Service”. See the specific list of changes published with this Contract for further details. These changes are summarised as follows:

---

<sup>1</sup> This document assumes that the Buyer is a Crown Body. If the Buyer is not a Crown Body you will need to seek separate legal advice on whether this document is suitable and how it should be amended. See also paragraphs below on contracting with the Crown. See [Schedule 1 of the Procurement Act 2023](#) as updated from time to time for information about the relevant thresholds.

<sup>2</sup> You may also wish to read PPN 005 – Reserving Below Threshold Procurements if you wish to consider reserving the procurement by supplier location and/or reserving by the procurement for Small and Medium sized Enterprises (SMEs) / Voluntary, Community and Social Enterprises (VCSEs).

<b>References &amp; Terminology</b>	Updated references from Public Contracts Regulations 2015 to the Procurement Act 2023 ('the Act'), and from "Contracts Finder" to "Find a Tender"
<p><b>Updates to the definition of "Transparency Information" to allow publication of relevant information / notices / documents under the new Act, Regulations, &amp; any PPNs</b></p> <p><b>Allowance for redactions under s94 (national security &amp; sensitive commercial information without overriding public interest in disclosure) &amp; s99 (contravening UK data protection legislation) of the Act</b></p> <p><b>Accompanying updates to the provisions 'What you must keep confidential' and 'When you can share information'.</b></p>	<p>Updates to this definition will allow publication of the following on Find a Tender:</p> <ul style="list-style-type: none"> <li>• Where estimated value of (a) a contract to be awarded by a central government authority is £12,000+ or (b) otherwise £30,000+ - a below-threshold Contract Details Notice under s87(3) of the Act</li> <li>• No copy of contract required to be published under the Act for contracts with an estimated value of less than £5m.</li> </ul> <p>Where a modification makes the contract a convertible contract – the Contract Change Notice under s77 of the Act, as well as any other future notices / copies of the contract need to be published since it is now above-threshold.</p>
<p><b>Statutory (30 days) Payment Terms - Buyer to Supplier; Supplier to Subcontractors</b></p> <p><b>Publication in case of non-compliance</b></p> <p><b>Invoicing by Supplier</b></p>	<p>Amended payment clauses to reflect Buyers paying Suppliers and Suppliers paying Sub-contractors within 30 days, in line with the intention of s88 of the Act.</p> <p>Amended clauses ensuring these payment requirements, and ability to publish in the event of non-compliance are flowed by the supply chain.</p> <p>Amended Supplier invoicing provisions to ensure they reflect the minimum information required to be included in invoices as per s88(7) of the Act.</p>
<b>Updates to termination grounds – modifications &amp; exclusions</b>	<p>Removed the following termination rights. No replacement as s78 of the Act does not apply to below threshold procurements:</p> <ul style="list-style-type: none"> <li>• Buyer can terminate where: <ul style="list-style-type: none"> <li>• The Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• If any of the events in 73(1) (a) or (b) of the Regulations happen.</li> <li>• Buyer can require termination of the Sub-contractor if it discovers that the Supplier was in one of the situations in 57 of the PCR at the time the Contract was awarded.</li> </ul> <p>Removed the detailed clauses on fraud and bribery. No replacement as s78 of the Act does not apply to below threshold procurements. Other termination rights are available.</p>
<b>Electronic Notices</b>	Updated the noticing provisions so that written notices will be served by email unless it is not practicable to do so, and ensuring that electronic (email) noticing is the prime method of serving notice, in line with s 96 of the Act.
<b>Conflicts of Interest ('Col')</b>	Updated the definition of Col and the Col terms to better align with ss81-83 of the Act
<b>PPNs (withdrawn / superseded by the Act)</b>	<p>Removed the reference to PPN 01/17 - Transparency Principles (and PPN 09/21 - Requirements to publish on Contracts Finder) in the definition of 'Transparency Information' – reflecting withdrawal of these PPNs.</p> <p>Updated the Col terms – reflecting withdrawal of PPN 04/21 - Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing.</p> <p>Removed the core terms &amp; definitions related to PPN 08/15 - Tax Arrangements of Appointees - reflecting withdrawal of this PPN. Replaced by revised wording.</p>

3. This Contract is drafted to align with the rules on below-threshold contracts set out in Part 6 of the Procurement Act 2023. This should be borne in mind if it is used for any above-threshold procurements.

### What the Short Form Contract may be Used For

4. This Contract assumes that there will be no TUPE liability and is therefore not suitable for outsourced services where a relevant TUPE transfer is likely to occur.
5. For the Contract to be subject to the Conditions, you must not accept any Supplier terms and conditions that are sent to you, or attached to the Order Form or the Conditions. If any of these events occur you must ensure that any Supplier terms and conditions are rejected and the rejection is recorded in writing.

6. The Short Form Contract can now be used for some simple above-threshold procurements, where it is proportionate and appropriate to do so. This is subject to any limits (e.g., tiering level (Gold/Silver/Bronze) or value (£) limits; use by exception only) put in place by your Department. You should also consider the risks of your particular procurement (e.g., data protection, security, IPR, SME access) as well as proportionality and value.
7. If you use the Short Form Contract for above-threshold procurements, it will be missing several aspects that are in the Mid-Tier Contract and you may need to amend it to work for your situation (e.g., by introducing additional clauses from the Mid-Tier Contract to cover missing but required clauses).’ See below for ‘missing’ aspects.
8. If the Contract is for the purchase of critical services, then the Short Form Contract will not be appropriate and Buyers should consider use of the Mid-Tier Contract or Model Services Contract instead.
9. The Short Form Contract is ‘missing’ the following aspects that are in the Mid-Tier Contract (although many of these provisions are optional in the Mid-Tier Contract and/or would be implied into an above threshold contract by the Procurement Act 2023):

#### **Procurement Act 2023 Provisions**

- Provisions for publishing Key Performance Indicators (“**KPIs**”) under s52 of the Act (for contracts with an estimated value of +£5m only)
- Electronic invoicing provisions under s67 of the Act (implied into above-threshold contracts)
- Provisions to reflect right for a Buyer to require specific subcontracting by a Supplier in certain circumstances under s72 of the Act; nor specific termination rights if a Supplier doesn’t enter into this subcontract if required (Buyer will still be able to exercise these rights for above-threshold contracts)
- Provisions to reflect exclusions under s78 of the Act, including discretionary Buyer termination rights around exclusions (implied into above-threshold contracts)

#### **Provision of Services/Goods**

- Provisions for the implementation & testing of Services
- KPIs
- TUPE / Staff Transfer provisions
- Detailed contract management provisions (although there are optional progress management & progress reports)
- Collaborative working principles
- Separate signing & services commencement dates



- Continuous improvement provisions
- Provisions for the installation of Goods
- Provisions for Service Recipients; ICT Services; Agile contracting; Leasing

### **Disputes & Issues**

- Step-in rights
- Detailed rectification process

### **Charges & Value For Money**

- Pricing models
- Indexation provisions
- Maximum profit cap provisions
- Allowable assumptions
- Open Book Contract Management ('OBCM')
- Requirement for Supplier to inform Buyer of any events likely to have a material impact on Charges
- Benchmarking

### **Service Continuity**

- Business Continuity and Disaster Recovery provisions
- Detailed financial distress provisions (there are some clauses, but not equivalent to the Mid-Tier Schedule)
- Corporate Resolution Planning Information provisions
- Guarantee clauses

### **Risk**

- Detailed insurance requirements (no place for insurance types or coverage required)
- Larger general and GDPR / data protection liability caps (but these could be amended)

### **Exit**

- Detailed exit provisions like requiring an exit plan or virtual library or transfer of relevant assets, or detailed termination assistance period/helping with retendering (some light touch terms)
- Ethical Wall Agreement template
- TUPE exit provisions

### **PPNs**

- Reference to Social Value or Social Value KPIs, or advertising roles on the Governments' 'Find a Job' website ([PPN 002](#) does not apply to below-threshold procurements, although requirements could be added on an ad-hoc basis where proportionate to do so)
- Carbon Net Zero / Carbon Reduction requirements (PPN 006 does not apply for contracts below £5m/PA (incl. VAT); and PPN 016 is not reflected in the Short Form)
- Terms on non-statutory supplier prompt payment (Prompt Payment [PPN 015](#) and [PPN 018](#) do not apply for contracts below £5m/PA (incl. VAT))
- Guidance on requiring information about steel (PPN 010 is not referenced in this Short Form guidance document)
- Provisions on OBCM (PPN 004 is not reflected in the Short Form Contract)

#### **Other**

- More IPR options (there are fewer options and less detailed drafting)
- Provisions for contracting in Scotland or Northern Ireland
- Concept of Key Subcontractors
- Detailed sustainability requirements
- Place to detail Supplier confidential / sensitive commercial information which the Buyer should try to protect from disclosure
- Detailed provisions on Contract variations, including provisions on general and specific changes in law

## Drafting considerations - Goods-only Contracts

10. If Delivery is in instalments, in order to comply with the Sale of Goods Act 1979, dates and details of instalments (including price and quantity etc.) must be set-out in the Specification in the Order Form, and any relevant annexes (if used).
11. Delivery is assumed to be undertaken by the Supplier to an address provided by the Buyer in the Order Form. If the Buyer wishes to collect the Goods, the Order Form (row 5 (Deliverables)) and any relevant annexes will need to be amended to provide for this. The Charges row (row 12 of the Order Form and any relevant annexes (if used) should also include the cost of Delivery of the Goods where appropriate.
12. Delivery is assumed to be on Working Days during normal business hours. If Delivery is to be outside of these days and times the Order Form will need amending at row 5 (Deliverables) under the heading 'Additional Delivery Instructions'.
13. The Contract assumes the Supplier does not require prior inspection of the Buyer's premises to fulfil the Contract.
14. Acceptance criteria are not covered. However, the Contract includes express rights to reject Goods which are defective (as the Sale of Goods Act 1979 provides that once goods have been accepted, these rights are lost).
15. 'Time is of the essence' is not included as in most cases it would be disproportionate to reject Delivery and claim damages if the Goods are Delivered late. Where this is a requirement, it should be stated in the Order Form. Where Delivery is late, the Contract provides a number of alternative remedies including rejection of the Goods or termination of the Contract.

## Drafting considerations - All Contracts

### Extensions and Modifications

16. The Contract provides for an optional extension period of up to 6 Months exercisable by the Buyer on not less than 10 'Working Days' notice prior to expiry of the Contract. This can be amended in the Order Form if required. Any extension of the term or variation of the scope of the Deliverables should be made in writing. Before extending or varying the Contract in this way, or under clause 25, you should always consider whether section 74 of the Procurement Act 2023 applies and, if it does, whether the grounds for permitting a modification under it are met. See [Guidance on Contract Modifications](#).
17. Section 74 will not apply where the Short Form contract is used for a below threshold procurement and any proposed modification will not result in the contract becoming an above threshold public contract (this is referred to in the Act as a "convertible contract").
18. Once a contract is a convertible contract, it is subject to the rules in the Act for public contracts, which include the requirement for the Buyer to publish Contract Change Notices when required by section 75 of the Procurement Act 2023, and the implied right of the Buyer to terminate the contract where it was modified in material breach of the Act or regulations in line with section 78 of the Procurement Act 2023.
19. Under the Procurement Act 2023, there are four new modification grounds in the Act – urgency and the protection of life; materialisation of a known risk; and two new grounds specific to defence authority contracts. Note that to rely on the 'materialisation of a known risk' ground, the risk must have been identified in the tender notice or transparency notice for the award of the contract, which means it must have been identified before the award of the contract.
20. If Buyers envisage exercising any options to increase the Services and/or Goods provided under the Contract, or to extend/renew the Contract, they may like to use the Mid-tier Contract if such changes will make the Contract a convertible contract, as this Contract may be missing some terms required for public contracts. See above for an overview of missing terms.

### Special Terms

21. If required, amendments can be made to the Conditions via the Order Form by use of Special Terms (row 22 (Special Terms)). If you wish to add, delete or amend any of

the Conditions, you can do this by inserting Special Terms. Special Terms take precedence over the Conditions in case of any conflict.

22. There are a couple of optional Special Terms provided in row 22 by way of example. These are only examples, and need not be used unless relevant. Other Special Terms may also be used if these are relevant and proportionate, and Buyers should take care not to add a large number of Special Terms, bearing in mind that adding these clauses could slow down the negotiation of the contract, and make it more complex.
23. Special Terms could, where required, be used to amend the contract so that it is specific to the type of Deliverables being procured, to require and facilitate Supplier due diligence, or reflect a Supplier's legal or regulatory requirements.
24. Data Processing and Management of Information, including Security. The Contract provides that where the Buyer requests, the Supplier must comply with the Buyer's:
  - a. Staff Vetting Procedures
  - b. security/data security requirements ('Security Requirements')
  - c. additional sustainability requirements
  - d. equality and diversity policy
  - e. requirements and instructions related to equality Law
  - f. environmental policy
  - g. health and safety policy

The Order Form (at row 20) provides optional text in square brackets for all these matters, in the event that any of these specific requirements are required. Security and Staff Vetting are also dealt with in more detail in new optional Annex 6.

25. New optional Annex 6 (Short Form Security Management) can be used when supplier will handle Government data or Personal Data. This implements both the Cyber Essentials PPN (PPN 014) and Security Classifications PPN (PPN 012), as well as other security requirements. If you have a particularly high-risk security project (e.g., the Supplier is handling more than limited quantities of data or sensitive data), or you are buying consultancy or development services, you may want to consider adapting the other Mid-tier Security Schedules for the Short Form Contract.
26. Comprehensive guidance on this Annex and other security schedules is available [here](#). If you are unclear on which security Annex (if any) to use, please consult security professionals within your organisation or department.

27. Clause 12.1 of the Contract provides for a default Supplier (and Buyer) liability limitation of 125% of the Charges paid or payable to the Supplier for all claims, apart from claims related to IPR, claims brought by any person employed or engaged by the Supplier, claims relating to non-payment by the Supplier of any tax or National Insurance, including any Income Tax, social security contributions, and any other liability, deduction, contribution, assessment or claim, death or personal injury caused by negligence, Supplier fraud, bribery or corruption, and any other liability which can't be limited by Law, which have unlimited liability. The Buyer also takes on unlimited liability in relation to claims against the Supplier brought by any person employed or engaged by the Buyer, caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
28. Whilst the liability provisions are designed to suit most cases, you should always ensure that they are appropriate for your needs, and if not, consider whether this Contract is appropriate. According to the [Sourcing Playbook](#), generally, with some limited exceptions, Suppliers should not be taking on unlimited liability under the Contract. If required, increasing the default liability limitation of 125% of the Charges paid or payable is an example of the type of special term that might be used. Please note, this liability cap should not be reduced.
29. Clause 12.6 provides that the Supplier's indemnity to the Buyer against data protection liabilities under clause 14.5.4 is limited to the Data Protection Liability Cap set out in row 14 of the Order Form. In row 14 (Data Protection Liability Cap) there is a space to insert an appropriate figure. The suggested range for this figure is between £500k-£5 million in the aggregate. This range is lower than the suggested range in the other standard contracts, e.g., the Model Services Contract ("**MSC**"), to reflect the size, users, and use of this contract.
30. The choice of figure should be in accordance with the sensitivity and volume of data concerned, as well as the likelihood and extent of any potential breach. The range given is a suggestion only and depending on the individual circumstances of the Contract, a cap below this range may be appropriate.
31. This liability cap applies to the Supplier's liability to the Buyer under the Contract only – it does not act as a cap on any data protection liability that a Supplier may incur to any third party (e.g., Supplier being fined by the Information Commissioner – ICO fines issued to suppliers will not be within the scope of this indemnity, meaning that suppliers will remain wholly liable where they are issued a fine directly by ICO. This is a deliberate cross-government policy position, and an exception to the general policy within the [Sourcing Playbook](#) that suppliers should not be expected to take on unlimited liabilities). But if a Supplier default leads to the Buyer breaching Data

Protection Legislation, the amount which a Buyer will be able to recover from the Supplier will be subject to this liability cap.

32. When determining where within (or outside, where appropriate) the range of £500k-£5 million the Data Protection Liability Cap should be set, Buyers should consider all of the circumstances of the particular Contract which may, among other things, include:
  - a. The volume of data to be processed under the Contract;
  - b. The sensitivity of the data to be processed;
  - c. Any additional Protective Measures which are required to be put in place;
  - d. Any risks that have been identified in relation to the processing;
  - e. Whether the processing will have a material impact on the individual if something goes wrong;
  - f. Where the Personal Data is held;
  - g. Whether there are single or multiple data sets held by the processor;
  - h. Whether multiple processors are involved in the processing;
  - i. What is the impact if the Personal Data becomes inaccurate, is not kept up to date or is disclosed to an unauthorised person;
  - j. What is the impact if the processor breaches the Contract or data protection law, or fails to comply with your instructions;
  - k. Whether the processor is reliable;
  - l. What reputation does the Supplier have in the market;
  - m. Where is the Supplier based;
  - n. What is the Supplier's proximity to individuals;
  - o. What financial resources does the Supplier have and are they financially solvent?
33. The relationship between the Parties should also be considered, for example, are they Joint Controllers, or Independent Controllers, or is one party the Controller and the other Processor? If the parties are Joint Controllers, then paragraph 7 of the joint controller agreement in Part B – Joint Controller Agreement of Annex 1 – Processing Personal Data sets out how liability for fines will be apportioned. This may be taken into account in setting the Data Protection Liability Cap.
34. If these circumstances suggest that data processing under the Contract is high risk, and/or requires a high Data Protection Liability Cap you could also consider the use of a different contract, such as the Mid-Tier Contract.

35. Clause 14 deals with security, data protection and data processing under the Contract. Clause 14 includes wording covering the situations where a) one Party is a Controller, the other a Processor, where b) the Parties are Joint Controllers, or c) where the Parties are Independent Controllers.
36. Where the Parties are Joint Controllers or Independent Controllers Part B – Joint Controller Agreement of Annex 1 – Processing Personal Data or Part C – Independent Controllers of Annex 1 – Processing Personal Data should be used as appropriate. In the vast majority of cases the Buyer will be the Controller, and the Supplier the Processor. If you believe another data processing scenario applies, such as the Parties being Joint or Independent Controllers, you **must** speak to your data protection team or DPO. Making the Supplier a Controller over Buyer information can create risks for Buyer data and information.
37. The question of whether the Supplier will be a Processor or Controller will affect their responsibilities and potentially the cost of providing the Deliverables. You should provide this information to the Supplier as early as possible. If you have any questions about data protection, or are unsure which data processing scenario applies, you should speak to your data protection team or DPO.

## Intellectual Property Rights

38. The UK GDPR contains restrictions on transfers of personal data outside the UK. One way to comply with UK GDPR rules on these restricted transfers is to put in place an Article 46 transfer mechanism. These are the “appropriate safeguards” listed in Article 46 such as the ICO’s International Data Transfer Agreement (IDTA), and the Addendum to the EU SCCs (the Addendum). These are referred to in this Contract, along with the EU equivalent, for transfers outside the EEA - the EU SCCs. However, where a Party is relying on one of these Article 46 transfer mechanisms they must carry out a [Transfer Risk Assessment](#) (**‘TRA’**), to make sure the personal data is still protected while overseas. TRAs help ensure that, in the specific circumstances of a restricted transfer, the Article 46 transfer mechanism will provide appropriate safeguards, and effective and enforceable rights for people - looking at risks to people’s rights arising in the destination country from third parties accessing the information that are not bound by the Article 46 transfer mechanism, in particular government and public bodies and risks to people’s rights arising from difficulties enforcing the Article 46 transfer mechanism. If you are a Controller, and your Processor is making the restricted transfer, only the Processor must complete the TRA.
39. The latest updates to the Contract also make provision for the [ICO UK-US ‘Data Bridge’, in case of transfers of Personal Data to US-based suppliers](#). This is included



in the provisions dealing with transfers of Personal Data outside the UK/and or the EEA to countries recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR and/or transfers under Article 45 of the EU GDPR. It is included across the Controller-Processor; Independent Controller; and Joint Controller provisions.

40. These updates apply to transfers to the United States, where the 'adequacy' grounds are being relied upon in accordance with Article 45 GDPR. They require Supplier and Subcontractor self-certification on the US Data Privacy Framework; notification to Buyers where self-certification may be threatened or is no longer in place; and require remediation or alternative data transfer mechanisms to be put in place. The updates also allow Buyers to terminate the Contract where there is a failure of notification; or self-certification is no longer in place and there is no remediation or alternative data transfer mechanisms put in place.
41. If Buyers plan to transfer criminal offence personal data to the United States under the Contract, if United States-based Suppliers/Subcontractors may use automated data processing; or if United States-based Suppliers /Subcontractors are ISPs (noting the 'right to be forgotten') – Buyers may want to speak to their DPO and review ICO guidance to ensure they have sufficient protections in place.
42. Clause 10 deals with IPRs. These state that (subject to the adoption of alternative IPR clauses via an option in the Order Form) the Buyer owns the foreground/New IPR that is developed under the Contract, and the Supplier has rights to this to deliver the Contract, as well to use it for e.g., commercial exploitation. Row 11 (Optional Intellectual Property Rights Clauses) of the Order Form allows you to amend the ownership and licensing of all New IPR created for or pursuant to the Contract, if required. Alternative optional IPR clauses are then set out in Annex 5 – Optional IPR Clauses.
43. In line with the Intellectual Property Rights Guidance Note, there are 3 different options for ownership and licensing of all New IPR. This Guidance Note sets out the importance of taking an IPR approach tailored to your procurement. If you would like to change the default position (Option 1 (default): Buyer owns New IPR, Supplier has rights to deliver the Contract, along with commercial exploitation) – you can use row 11 to select one of the other available options:
  - a. Option 2 (optional): Buyer owns New IPR, Supplier has rights to deliver the Contract only;
  - b. Option 3 (optional): Supplier owns New IPR, Buyer has rights for the current contract and broader public sector functions.

44. As the Crown is indivisible, Buyers which are Crown Bodies should be aware that, firstly, they can only contract as part of the Crown, and secondly, that any IPR which they take ownership of or is licensed to them can be capable of use by any part of the Crown. Buyers which are Crown Bodies should consider this fact when deciding which model of ownership and licensing of IPR to use.
45. The default (Option 1) is suitable for use in situations where the Buyer should retain ownership of any New IPR but where the Supplier should be able to use any New IPR developed. Buyers may wish to consider this option where they want to retain the New IPR (for example, if the New IPR is likely to be high risk or business critical, or if the Buyer wants to retain the New IPR for use across multiple contracts or for some wider benefit, or where the Crown provides a lot of the IPR which will be further developed by the Supplier (leading to mixed-ownership), or if controlling the New IPR is in the public interest, for example, where an Buyer is best placed to manage or commercialise an asset), but they are also happy for the Supplier to commercially exploit that New IPR. This ought to generally result in some benefit for the Buyer, such as lower costs, or incentivising innovation in Supplier solutions. Where the Buyer is a Crown body, Buyers should consider that this Foreground IPR will be owned by and therefore can be used by any emanation of the Crown. This will mean that the Supplier will likely not be able to commercially benefit under this option simply by sub-licensing this IPR to Crown entities (as it is already owned by the Crown), however, the Supplier will be able to commercially exploit this IPR elsewhere.
46. Option 2 should be considered for use where the Buyer wants to retain the New IPR for the reasons listed above, but they also want to limit the Supplier's use of that New IPR, e.g. for national security reasons. This is more restrictive for Suppliers, and where the Authority is a Crown body, Buyers should consider that this will be owned by and therefore can be used by any emanation of the Crown. It also cannot be used by the Supplier for other customers. This may make this option unsuitable for use in circumstances where it could lead to uneconomic pricing by Suppliers. The Buyer is only able to publish the New IPR under Open Licence under this option, so as to avoid undermining the commercial exploitation rights of the Supplier.
47. Option 3 should be considered for use where (a) there is no clear benefit in the Buyer owning the New IPR, or (b) where any New IPR created cannot easily be separated from the Supplier's Existing IPR (e.g., Software As A Service ("**SAAS**")), but where a licence is needed for the current contracted service (and future replacement of that service), as well as contracts and services not yet awarded, and broader public sector functions. Again, given that the Supplier will own the New IPR under this option, this ought to generally result in some benefit for the Buyer, such as lower costs, or incentivising innovation in Supplier solutions. Where the Buyer is a Crown body, Buyers should consider that the licence to the New IPR will be granted to the Crown as

a whole and therefore can be used by any emanation of the Crown. This will mean that the Supplier will likely not be able to commercially benefit under this option simply by licensing this IPR to Crown entities (as it is already licensed to the Crown).

However, as owner, the Supplier will be able to commercially exploit and otherwise use this IPR elsewhere.

48. You should also consider whether any IPR is Crown Copyright. The default licence for most Crown copyright and Crown database right information is the Open Government Licence ('OGL'). The Keeper, who is the Chief Executive Officer of The National Archives, manages Crown copyright and Crown database rights under Letters Patent. It is the Keeper who decides whether Crown copyright material can be made available on terms other than OGL. For more detail, see the [National Archives Guidance](#).
49. The Short Form does not divide IPR into COTS Software (Commercial Off-The-Shelf Software) and non-COTS IPR. If you require this, you may like to consider using a different contract, such as the Mid-Tier Contract. Unlike the MSC and the Mid-Tier Contract, third party claims in relation to COTS software are included in the unlimited indemnity given by the Supplier to the Buyer.
50. Clause 10 also includes a prohibition on Suppliers using IPRs owned by a third party for provision of the services unless the Buyer has had the opportunity to approve their use. The Supplier is expected to get an equivalent licence for the Buyer as it gives for its own Supplier Existing IPR. If the Supplier is unable to do this, the Buyer can accept a licence on alternative terms, or otherwise approve use. Licences on standard commercial terms which permit the performance of the contract would be approved in the vast majority of cases. The Buyer should take legal advice if it is considering approving use without acceptable licence terms.

## Transparency, Subcontracting, Claims, and Termination

51. The Contract contains provisions at clause 15 and 16 to support Buyers' increased transparency reporting under the Procurement Act 2023, and associated regulations, guidance, and PPNs, requiring Suppliers to provide any co-operation and information needed so the Buyer can comply with any of its obligations in relation to publishing transparency information. The wide definition of "Transparency Information" makes clear that Buyers are permitted to publish information and documents required under the Act, such as below-threshold Contract Details Notices, and copies of the Contract, redacted as required in line with section 94 of the Act.
52. The Contract also contains further controls over subcontracting at clause 24 (Supply Chain). These provide that the Supplier is responsible for all acts and omissions of its Subcontractors, terms the Supplier is required to have (or in some cases, make efforts

to have) in its Sub-Contracts, a requirement for Suppliers to exercise due skill and care when selecting/appointing Subcontractors, requiring termination of Sub-Contracts in certain situations. Suppliers will be required to provide names of all Subcontractors to the Buyer, who are then appointed unless the Buyer reasonably rejects them within 10 Working Days.

53. The Contract also contains a short clause dealing with the conduct of Claims (clause 27 (Dealing with claims)). This gives the Indemnifier some control in the way in which Claims for which they might be liable to the Beneficiary are dealt with, but ensures protection for the Beneficiary requiring the Indemnifier to defend those Claims diligently and not to settle the Claim without the Buyer's consent.
54. If the Buyer thinks that there has been a Default, legal advice should be sought to ensure that the Buyer preserves all of its contractual rights.
  - a. Most of the rights for both the Buyer and the Supplier to terminate the Contract are set out in Clause 11. There are however some termination rights which are set out in other clauses (see for example, Clauses 7.8.2 (Termination for failure to provide or implement a financial stability plan) and 20.3 (Termination on Force Majeure). Each termination right is clear on which consequences of termination in Clause 11 apply where that termination right is enforced.

## Public Trust and Reputation Clauses

55. Clauses 11.4.1.4 & 24.6.3 are not intended to limit any supplier's legal obligations, limit their ability to fairly criticise a government policy or constrain whistleblowing. This includes charities' ability to advocate for causes related to their stated purpose. The intent of these clauses is to set an expectation that all parties will be mindful of the need to maintain public trust and protective of government's reputation, and ensure that neither they, nor any of their partners or subcontractors, bring government into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in government.

## Completion of the Cover Letter (if used), Order Form, and Annexes

### Cover Letter and Order Form

56. You will need to insert the Buyer letterhead and the Supplier's name and address into the cover letter attached to the Order Form. The assumption is that the Order Form will be sent via email. If this is incorrect, then you should amend the letter accordingly by deleting the sentence containing the Supplier's email address, as well as the reference to the Buyer email in the body of the letter.
57. There is further square bracketed emboldened text throughout the cover letter and the Order Form that you will need to replace with the requested information, or where [optional text] is provided, delete the option that is not relevant, and/or amend as required. Guidance is provided throughout the Order Form. Some definitions refer back to the Order Form, so you should make sure this is properly completed.
58. You will need to complete the Order Form by reading the guidance and completing the rows and/or selecting the appropriate option, including (where relevant) any packaging instructions and any additional Delivery information, including any specific information about the service Delivery, for example, if the Services are to be Delivered only on certain days of the week rather than for the whole week, the expected Start Date and End Date of the Contract and any extension period and notice required, and whether optional IPR clauses are to be used and if so, which. There are also spaces for the name and addresses of the Authorised Representatives of the Parties for the purposes of serving notices under the Contract. It is recommended that the person for whose attention notices should be marked is identified by job title rather than name to cater for staff changes.
59. You will need to set out details of the Charges and payment terms in rows 12 and 13 of the Order Form by, in each case, selecting the appropriate option and deleting the inapplicable option. The Contract provides that unless otherwise agreed in writing by the Buyer, the Charges include all the Supplier's costs and expenses. If you wish to amend this position, you will need to include appropriate text in row 12. If you select an option which refers to an annex, you will need to insert the relevant information in that annex. Otherwise annexes 2, 3, 4, or 5 should be deleted or marked as not applicable. Please note that if you delete annexes, cross-referencing may need amending.
60. Row 15 allows you to specify any progress meetings and progress reports that are required.

61. Rows 19 and 20 of the Order Form contains drafting to enable you to specify any Key Staff and provide details on policies and procures.
62. Row 22 of the Order Form allows you to enter any relevant Special Terms. See above for the effect of these Special Terms.
63. To the extent that these provisions are not relevant to your Contract, they should be deleted or marked as not applicable. Please note that if you delete sections, cross-referencing and numbering may need amending.
64. The Order Form (on row 13) states that the Buyer will, within 10 Working Days (the number of days can be varied to reflect your specific practices) of receipt of a countersigned copy of the Order Form, send the Supplier a PO Number. You will need to ensure this action is completed, or amend this if required.
65. The Contract is accepted on receipt by the Buyer of a copy of the Order Form countersigned. The cover letter states that this is to be signed by the Supplier within 7 days from the date of the cover letter (if used). If you wish to change the period between offer and acceptance you must amend the number of days in the cover letter.

## The Annexes

66. Annex 1 is mandatory and should be included every time, even if it is left as a template. Annexes 2-6 are optional and may be used if required/desired.
67. Annex 4 is an annex to record and incorporate any Supplier's tender that you would like to refer to. If including the Supplier's tender in the annex, you should consider the format of that tender and whether it is suitable for inclusion in the Contract. There is an order of precedence to the various parts of the Contract and, where the Supplier's tender is included in the Contract, this will sit at the bottom of that order of precedence, meaning any other terms which conflict with it would apply instead. However, if the Buyer decides that any parts of the Supplier's tender provide a better commercial position for the Buyer (for example, it is more favourable the specification) then the Buyer can elect for those parts of the Supplier's tender to take precedence over the other documents that make up the Contract.
68. Annex 5 sets out optional alternative IPR wording which can replace clause 10 (IPRs) of the Conditions if required. See above for more details.
69. Annex 6 contains optional security management provisions. See above for more details.