**DYNAMIC FRAMEWORK**

**SCHEDULE 4.3**

**SUB-CONTRACTING**

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| **VERSION** | **DATE** | **COMMENT** |
| 1.0 | 10 June 2020 | Initial Release |
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1. Schedule 4.3
2. SUB-CONTRACTing

**PART A: SUB-CONTRACTING PRINCIPLES AND MARKET STEWARDSHIP**

1. Notwithstanding the remaining provisions of this Schedule 4.3 (Sub-contracting), the Supplier shall at all times be responsible for ensuring that each Sub-contract it enters into shall be sufficient to enable the Supplier to discharge its obligations under the Call-Off Contract.
2. **SUB-CONTRACTING PRINCIPLES**

The Supplier must adhere to the following principles in respect of any sub-contracting of its obligations under the Call-Off Contract. The Customer reserves the right to require the Supplier at any time to detail how it has complied with these principles in respect of its Sub-contracts or any specific Sub-contract.

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| **Principle** |
| **Management of risk in the supply chain** – All contractual and other risk should be appropriately managed. This should extend to not passing risk down supply chains disproportionately, fair apportionment of referrals with regard to easier cases, pro-active management of volume or demographic fluctuations and other events and management of IPR. |
| **Supply chain ethos –** The Customer envisages that a sustainable relationship will be fostered throughout the term of the Sub-contract which meets the expectations of both parties. Therefore, in entering into the Sub-contract the Supplier shall ensure that there is a clear understanding of what is important to both parties and this is clearly documented in the Sub-contract and reviewed during its term to ensure that expectations continue to be met. |
| **Visibility across supply chain -** The Customer expects that Sub-contractors have visibility of participation within the supply chain. This should include the volume of business handled by supply chain partners and the sharing of good practice. Sub-contractors shall have sight of the Call-Off Contract, subject to any redactions for commercial sensitivity. |
| Reward and recognition of good performance – The Customer considers it important that organisations in the supply chain receive fair remuneration for proper performance of Sub-contracts. Rewards and recognition of good performance should be shared across the chain. |

**PART B: SUB-CONTRACTING MANDATORY PROVISIONS**

1. **SUB-CONTRACTING MANDATORY PROVISIONS**

Except where the Customer has given its prior written consent, the Supplier shall enter into a written form of agreement with each Sub-contractor and shall ensure that such Sub-Contract shall:

a) where the Sub-contract is entered into with a Key Sub-contractor include, as a minimum, the provisions marked as "Yes" in the third column of the table below; and

b) in all other Sub-contracts include, as a minimum, the provisions marked as "Yes" in the fourth column of the table below.

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| **No** | **Requirement** | **Sub-contract with a Key Sub-contractor** | **Other Sub-contract** |
|  | **Service Delivery/Scope –** Must include provisions setting out in appropriate detail the services that the relevant Sub-contractor must provide or the scope and subject matter of the agreement in the case of Alternative Related Agreements. | Yes | Yes |
|  | **Consideration** - Must include provisions setting out the cost for the service to be delivered. Where volumes may fluctuate the Sub-contract must include a mechanism to accommodate for fluctuations in volume (both increases and reductions in work allocation and any associated drop in income, and actions to mitigate these risks). Or in relation to Alternative Related Agreements include provisions setting out the details of the levels of funding, grants or other support and any related conditionality. | Yes | Yes |
|  | **Service Levels** – Must include relevant provisions setting out any service levels that the Sub-contractor is required to meet together with any applicable quality requirements. | Yes | Yes |
|  | **Intellectual Property Rights** –Must include such provisions as are required to ensure that the Supplier complies with Clauses 19.31 and 19.32. | Yes | Yes |
|  | **Payment terms** **–** Must include a requirement to pay any invoices within 30 days in accordance with the provisions of Clause 17.20.1 together with an obligation on the Supplier to apply the Government's late payment policy. | Yes | Yes |
|  | **Confidentiality, Data Protection, FOIA, open book data and audits** – Must include obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of a) data protection requirements set out in Clauses 23, 26 and Schedule 10 (Processing Personal Data); b) FOIA requirements set out in Clause 25; c) confidentiality requirements set out in Clause 24; d) the keeping of records in respect of the services being provided under the Sub-contract, including the provision of Supporting Documentation and e) the conduct of audits set out in Schedule 7.5 (Reports, Records and Audit Rights). | Yes | Yes |
|  | **Management Information** – Must include the details of any management information that the Sub-contractor must provide each month in line with the relevant requirements of the Call-Off Contract. | Yes | Yes |
|  | **Assign or novate –** Must include a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer and/or any Replacement Supplier(s) without restriction (including any need to obtain any consent or approval) or payment by the Customer or the relevant Replacement Supplier(s). | Yes | No |
|  | **Step in –** Must include a provision enabling the Supplier, the Customer or any other person on behalf of the Customer to step-in on substantially the same terms as are set out in Clause 31. | Yes (unless otherwise stated in Schedule 4.3 of the Call-Off Contract) | No |
|  | **Termination assistance** – Must include provisions enabling the Customer to make direct requests of the Sub-contractor during any Termination Assistance Period and for the Sub-contractor to provide information and data directly to the Customer to facilitate any re-procurement or smooth exit of the Call-Off Contract. | Yes | Yes |
|  | **Governance** – Must include a right for the Sub-contractor to communicate directly with the Customer where appropriate (without breaching any confidentiality or other contractual restrictions). | Yes | Yes |
|  | **Third Party rights** – Must include a) a right under CRTPA for the Customer to enforce any provisions under the Sub-contract which are capable of conferring a benefit upon the Customer; b) a provision enabling the Customer to enforce the Sub-contract as if it were the Supplier. | Yes | No |
|  | **Termination rights -** provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 38.3.1 and 39.3 and Schedule 7.2 (Payments on Termination) of this Agreement. | Yes | No |
|  | **Termination rights** – Must include a right for the Supplier to terminate the Sub-contract if the Call-Off Contract is terminated for any reason. | Yes | Yes |
|  | **Further Sub-contracting -** Must include a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-contract without first seeking the written consent of the Customer. | Yes | No |
|  | **Dispute Resolution -** Must include a provision requiring the Sub-contractor to participate in, and if required by the Customer in the relevant Multi-Party Procedure Initiation Notice, to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure. | Yes | No |
|  | **Financial Distress –** Must include a provision requiring the Sub-contractor to a) promptly notify the Supplier and the Customer in writing of any of the following of which it is, or ought to be, aware:  (i) the occurrence of a Financial Distress Event in relation to such Key Sub-contractor; or  (ii) any fact, circumstance or matter of which it is aware which could cause it to suffer a Financial Distress Event,  and in any event within the timescales set out in Schedule 7.4 (Financial Distress),  and must include a provision requiring the Key Sub-contractor to co-operate with the Supplier and the Customer in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Customer to discuss and review the effect of the Financial Distress Event or the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan. | Yes | No |