

National Highways Limited

Social Enterprise Dynamic Purchasing System

SUPPLIER PACK PART B

B2 – SEDPS Agreement

**SEDPS Agreement governing your Offered Deliverables on the National Highways
Dynamic Purchasing System**

[Insert Supplier Name]

You, the “**Supplier**”, have submitted an offer to National Highways (“**NH**”) to provide the **Offered Deliverables** through the National Highways Social Enterprise Dynamic Purchasing System. The National Highways’ Social Enterprise Dynamic Purchasing System (**SEDPS**) is an electronic method of procurement available for **Goods** and **Services**, like a framework. It is a two-stage process which is open for **Suppliers** to join at any time throughout its duration on the terms set out in these terms and conditions (the **SEDPS Agreement**).

The SEDPS Agreement

The **SEDPS Agreement** shall be as follows:

- 1) National Highways shall include the **Supplier** and the **Offered Deliverables** in the **SEDPS** on the **Terms** set out in this **SEDPS Agreement** and conditions specified in Annex A to this **SEDPS Agreement** (the “Conditions”).
- 2) No other **Supplier Terms** are part of the **SEDPS Agreement**.
- 3) If National Highways and the **Supplier** enter the **SEDPS Agreement**, National Highways and the **Supplier** will, each at their own expense, do all acts and things necessary or desirable to give effect to the **SEDPS Agreement**.

Accepting the National Highways offer of the SEDPS Agreement

The **Supplier** enters the **SEDPS Agreement** by signing this **Agreement** via Docu-sign on Jaggaer, with National Highways countersigning upon successful application.

National Highways proposes to enter the **SEDPS Agreement** by signing this to form a legally binding **Agreement**.

National Highways and the **Supplier** intend to be bound by the **Terms** of the **SEDPS Agreement** and agree that the **SEDPS Agreement** takes effect on and from the date of the last signature.

Annex A
Agreement Conditions

1. DEFINITIONS USED IN THE *SEDPS Agreement*

In this *SEDPS Agreement*, unless the context otherwise requires, the following words shall have the following meanings:

Agreement	means the <i>SEDPS Agreement</i> ;
Buyer	means an organisation which is the <i>Buyer</i> of the <i>Goods</i> and/or <i>Services</i> specified in the <i>Request for Quotation</i> (RFQ);
Buyer Agreement	means the <i>Agreement</i> for the supply of <i>Deliverables</i> entered into between a <i>Buyer</i> and the <i>Supplier</i> in the form set out in Annex C which is created by the <i>Supplier</i> countersigning the <i>Buyer Letter</i> ;
Buyer Letter	the Letter from the <i>Buyer</i> to the <i>Supplier</i> offering to enter into the <i>Buyer Agreement</i> ;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: i) Government Department; ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); iii) Non-Ministerial Department; or iv) Executive Agency;
Charges	means the <i>Charges</i> for the <i>Deliverables</i> under a <i>Buyer Agreement</i> ;
Confidential Information	means all <i>Information</i> , whether written or oral (however recorded), provided by the disclosing <i>Party</i> to the receiving <i>Party</i> and which (i) is known by the receiving <i>Party</i> to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving <i>Party</i> to be confidential;
Controller	has the meaning given to it in the <i>UK GDPR</i> ;
DPA 2018	Data Protection Act 2018;

Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this SEDPS Agreement , and/or actual or potential loss and/or destruction of Personal Data in breach of this SEDPS Agreement , including any Personal Data ;
Data Protection Impact Assessment	an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018 ;
Data Protection Legislation	(i) all applicable UK Law relating to the processing of Personal Data and privacy, including but not limited to the UK GDPR , and the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and the UK GDPR as amended from time to time, (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the DPA 2018 ;
Data Protection Officer	has the meaning given to it in the UK GDPR ;
Data Subject	has the meaning given to it in the UK GDPR ;
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data ;
Deliver	means hand over the Deliverables to the Buyer at the address and on the date specified in the Buyer Agreement , which shall include unloading and any other specific arrangements agreed in any Special Term of the Buyer Agreement . “ Delivered ”, “ Deliveries ” and “ Delivery ” shall be construed accordingly;
Deliverables	Goods and/or Services provided by the Supplier to a Buyer under a Buyer Agreement ;
DOTAS	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed Information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act

	2004 and as extended to National Insurance Contributions;
Electronic Invoice	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
Existing IPR	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the SEDPS Agreement (whether prior to the date of the SEDPS Agreement or otherwise);
FOIA	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure Event	<p>any event, occurrence, circumstance, matter or cause affecting the performance by either National Highways or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party which prevent or materially delay the affected Party from performing its obligations under the SEDPS Agreement and which are not attributable to any willful act, neglect or failure to take reasonable preventative action by the affected Party, including:</p> <ul style="list-style-type: none"> i) riots, civil commotion, war or armed conflict; ii) acts of terrorism; iii) acts of a Central Government Body, local government or regulatory bodies; iv) fire, flood, storm or earthquake or other natural disaster, <p>but excluding any industrial dispute relating to the Supplier, the Supplier Staff, or any other failure in the Supplier or the subcontractor's supply chain;</p>
General Anti-Abuse Rule	<p>a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>b) any future legislation introduced into parliament to counteract tax advantages arising from abusive</p>

	arrangements to avoid National Insurance contributions;
Goods	means the Goods to be supplied by the Supplier to the Buyer under a Buyer Agreement ;
Good Industry Practice	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
Halifax Abuse Principle	the principle explained in the CJEU Case C-255/02 Halifax and others;
Independent Control	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and “ Independent Controller ” shall be construed accordingly;
Information	has the meaning given under section 84 of the FOIA ;
Information Commissioner	the UK’s independent authority which deals with ensuring Information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
Initial SEDPS Period	means the period for which the SEDPS will operate, being three years from the SEDPS Start Date ;
Insolvency Event	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
IR35	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/IR35-find-

	out-if-it-applies;
Joint Controllers	Takes the meaning given in Article 26 of the UK GDPR ;
Law	any Law , subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, by-Law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of Law , or directives or requirements with which the relevant Party is bound to comply;
Law Enforcement Processing	means processing under Part 3 of the DPA 2018 ;
Losses	all Losses , liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;
New IPR	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the SEDPS Agreement but shall not include the Supplier's Existing IPR ;
NH Data	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of National Highways' Confidential Information , and which: i) are supplied to the Supplier by or on behalf of National Highways ; or ii) the Supplier is required to generate, process, store or transmit pursuant to the SEDPS Agreement ; or b) any Personal Data for which National Highways is the Data Controller ;
Occasion of Tax Non-Compliance	where: a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under

	<p>any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the first day of the Term or to a civil penalty for fraud or evasion;</p>
Offered Deliverables	means the Goods and/or Services which meet the description of the service heading relating to the Deliverables and the location of the Deliverables as detailed in the SEDPS ;
Party	the Supplier or National Highways (as appropriate) and "Parties" shall mean both of them;
Personal Data	has the meaning given to it in the UK GDPR ;
Personal Data Breach	has the meaning given to it in the UK GDPR ;
Processor	has the meaning given to it in the UK GDPR ;
Processor Personnel	all directors, officers, employees, agents, consultants and Suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under the SEDPS Agreement ;
Prohibited Acts	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by National Highways or any other public body a financial or other advantage to:</p> <p>i) induce that person to perform improperly a relevant function or activity; or</p> <p>ii) reward that person for improper performance of a relevant function or activity;</p> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a</p>

	<p>relevant function or activity in connection with the Agreement, or</p> <p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>ii) under legislation or common Law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud National Highways or other public body; or</p> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
Protective Measures	<p>appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties arising under Data Protection Legislation and the SEDPS Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and Services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
Recall	<p>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 right intellectual property rights) that might endanger health or hinder performance;</p>
Relevant Requirements	<p>applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;</p>
Relevant Tax Authority	<p>HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;</p>
Regulations	<p>the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;</p>

Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the Term "request" shall apply);
Request for Quotation	Is the process in which the Buyer will request a quote from the Supplier for a specific Goods and/or Services
Services	means the services to be supplied by the Supplier to the Buyer under a Buyer Agreement ;
SEDPS	means the Social Enterprise Dynamic Purchasing System set up by National Highways to provide a route to market for Social Enterprises considered to be companies, organisations, or consortiums/joint ventures with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners;
SEDPS Agreement	the Terms and conditions which govern how the Supplier must interact with National Highways under the SEDPS ;
SEDPS Standard Selection Questionnaire	the questionnaire completed by the Supplier as part of its application for inclusion in the SEDPS ;
SEDPS Start Date	This is when we set the whole DPS up, not the start of an individual contract;
SEDPS Expiry Date	means the date that is the later of three years from the SEDPS Start Date , or, if the Initial SEDPS Period is extended by National Highways under clause 3.11, the end date of the last extended period;
Special Term	any Special Term specified in the SEDPS Agreement ;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice or, where applicable, National Highways' own procedures for the vetting of personnel as provided to the Supplier from time to time;

Sub-Processor	any third Party appointed to process Personal Data on behalf of the Supplier related to the SEDPS Agreement ;
Supplier Staff	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any subcontractor engaged in the performance of the Supplier obligations under the SEDPS Agreement ;
Supplier	means the person named as Supplier in the SEDPS Agreement ;
Term	means the period from the date that the Supplier is admitted to the SEDPS to the earlier of: (1) the SEDPS Expiry Date ; or (ii) the date that the SEDPS Agreement is terminated in accordance with the Terms and conditions of the SEDPS Agreement ;
Transparency Information	the content of the SEDPS Agreement , including any changes to the SEDPS Agreement agreed from time to time, except for: (i) any Information which is exempt from disclosure in accordance with the provisions of the FOIA , which shall be determined by National Highways;
UK GDPR	means the UK General Data Protection Regulation;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
Workers	any one of the Supplier Staff which National Highways, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables ; and;
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London;

2. UNDERSTANDING THE *SEDPS Agreement*

In the *SEDPS Agreement*, unless the context otherwise requires:

- 2.1. References to numbered clauses are references to the relevant clause in these **Terms** and conditions;
- 2.2. Any obligation on any **Party** not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3. The headings in this *SEDPS Agreement* are for **Information** only and do not affect the interpretation of the *SEDPS Agreement*;
- 2.4. References to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5. The singular includes the plural and vice versa;
- 2.6. A reference to any **Law** includes a reference to that **Law** as amended, extended, consolidated or re-enacted from time to time and to any legislation or by-**Law** made under that **Law**; and
- 2.7. The word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

3. HOW THE *SEDPS Agreement* WORKS

- 3.1. The **Supplier** is eligible for the award of **Buyer Agreements** during the **Term**.
- 3.2. National Highways does not guarantee the **Supplier** any exclusivity, quantity, or value of work under the *SEDPS Agreement*.
- 3.3. In consideration of the sum of £1 paid by National Highways to the **Supplier**, National Highways and the **Supplier** agree to the terms of the agreement.
- 3.4. The **Supplier** shall enter into a **Buyer Agreement** for the provision of **Deliverables** with each **Buyer** in the form set out in Annex C to this *SEDPS Agreement*.
- 3.5. Each **Buyer Agreement** is a separate contract from this *SEDPS Agreement*, is between a **Supplier** and a **Buyer** and survives the termination of this *SEDPS Agreement*.
- 3.6. The **Supplier** acknowledges it has all the **Information** required to perform its obligations under the *SEDPS Agreement* before entering the *SEDPS Agreement*. When **Information** is provided by National Highways no warranty of its accuracy is given to the **Supplier**.

- 3.7. The **Supplier** will not be excused from any obligation because it failed to either:
- 3.7.1. Verify the accuracy of any **Information** provided to the **Supplier** by or on behalf of National Highways prior to the first day of the **Term**; or
 - 3.7.2. Properly perform its own due diligence.
- 3.8. National Highways will not be liable for errors, omissions, or misrepresentation of any **Information**.
- 3.9. The **Supplier** warrants and represents all statements made and documents submitted as part of the **SEDPS Standard Selection Questionnaire** are and remain true and accurate. The **Supplier** confirms it commits to and upholds the objectives it stated it delivers against in its application to join the **SEDPS**, specified in Annex D to this **SEDPS Agreement** (the “SEDPS Social Value Objectives”).
- 3.10. When determining the award of a **Buyer Agreement** a **Buyer** may, following a review of the **Offered Deliverables** to identify those which meet its requirements and after requiring the **Supplier** to answer any suitability assessment questions permitted by the **Regulations**:
- 3.10.1. Award a **Buyer Agreement** to the **Supplier**; or
 - 3.10.2. Require the Supplier, together with other potential Suppliers, to engage in a further competition and provide such detail on the Offered Deliverables and Information relevant to the proposed Buyer Agreement as the Buyer sees fit, but the Supplier acknowledges that nothing in this SEDPS Agreement shall guarantee the Supplier the award of any Buyer Agreement or involvement in any further competition.

4. WHAT NEEDS TO BE *DeliverED*

4.1. All *Deliverables*

- 4.1.1. The **Supplier** must provide **Deliverables** under any **Buyer Agreement**.
 - 4.1.1.1. in accordance with the **Offered Deliverables**;
 - 4.1.1.2. to a professional standard;
 - 4.1.1.3. using reasonable skill and care;
 - 4.1.1.4. using **Good Industry Practice**;
 - 4.1.1.5. using its own policies, processes and internal quality control measures as long as they do not conflict with the **Agreement** or with the **Buyer Agreement**;
 - 4.1.1.6. on the dates agreed; and
 - 4.1.1.7. that comply with all **Law**.

- 4.1.2. The **Supplier** must provide **Deliverables** with a reasonable warranty period, taking account of the nature of the **Deliverables**, from **Delivery** against all obvious defects.
- 4.1.3. The **Supplier** must assign all third-**Party** warranties and indemnities covering the **Deliverables** for the **Buyer's** benefit.

4.2. **Goods clauses**

Each **Buyer Agreement** shall include, as a minimum, the following provisions in relation to **Goods**, unless otherwise agreed with the **Buyer** in writing:

- 4.2.1. All **Goods Delivered** must be new, or as new if recycled.
- 4.2.2. All manufacturer warranties covering the **Goods** must be assignable to the **Buyer** on request and for free.
- 4.2.3. The **Supplier** transfers ownership of the **Goods** on completion of **Delivery** or payment for those **Goods**, whichever is earlier.
- 4.2.4. Risk in the **Goods** transfers to the **Buyer** on **Delivery** of the **Goods** but remains with the **Supplier** if the **Buyer** notices damage following **Delivery** and lets the **Supplier** know within three **Working Days** of **Delivery**.
- 4.2.5. The **Supplier** warrants that it has full and unrestricted ownership of the **Goods** at the time of transfer of ownership.
- 4.2.6. The **Supplier** must **Deliver** the **Goods** on the date and to the specified location during the **Buyer's** working hours.
- 4.2.7. The **Supplier** must provide sufficient packaging for the **Goods** to reach the point of **Delivery** safely and undamaged.
- 4.2.8. All deliveries must have a delivery note attached that specifies the order number, type, and quantity of **Goods**.
- 4.2.9. The **Supplier** must provide all tools, **Information** and instructions the **Buyer** needs to make use of the **Goods**.
- 4.2.10. The **Supplier** must indemnify the **Buyer** against the costs of any **Recall** of the **Goods** and will give notice of actual or anticipated action about the **Recall** of the **Goods**.
- 4.2.11. The **Buyer** can cancel any order or part order of **Goods** which has not been delivered. If the **Buyer** gives less than 14 days' notice, then it will pay the **Supplier's** reasonable and proven costs already incurred on the cancelled order as long as the **Supplier** takes all reasonable steps to minimise these costs.

4.2.12. The **Supplier** must at its own cost repair, replace, refund or substitute (at the **Buyer's** option and request) any **Goods** that the **Buyer** rejects because they do not conform with clause 4.2. If the **Supplier** does not do this it will pay the **Buyer's** costs including repair or re-supply by a third-Party.

4.3. **Services clauses**

Each **Buyer Agreement** shall include, as a minimum, the following provisions in relation to **Services**, unless otherwise agreed with the **Buyer** in writing:

4.3.1. Late delivery of the **Services** will be a default of the **Buyer Agreement**.

4.3.2. The **Supplier** must co-operate with the **Buyer** and third-party **Suppliers** on all aspects connected with the delivery of the **Services** and ensure that **Supplier Staff** comply with any reasonable instructions.

4.3.3. The **Supplier** must at its own risk and expense provide all equipment required to **Deliver** the **Services**.

4.3.4. The **Supplier** must allocate sufficient resources and appropriate expertise to the **Buyer Agreement**.

4.3.5. The **Supplier** must take all reasonable care to ensure performance does not disrupt the **Buyer's** operations, employees or other contractors.

4.3.6. The **Supplier** must ensure all **Services**, and anything used to **Deliver** the **Services**, are of good quality and free from defects.

4.3.7. The **Buyer** is entitled to withhold payment for partially or undelivered **Services**, but doing so does not stop it from using its other rights under the **Buyer Agreement**

5. NATIONAL HIGHWAYS' OBLIGATIONS TO THE **Supplier**

5.1 If the **Supplier** fails to comply with the **SEDPS Agreement**, and that failure to comply was caused by National Highways:

5.1.1. National Highways cannot terminate the **SEDPS Agreement** under clause 10;

5.1.2. The **Supplier** is entitled to reasonable and proven additional expenses and to relief from liability under this **SEDPS Agreement**, and

5.1.3. The **Supplier** cannot suspend the ongoing supply of **Deliverables** under any **Buyer Agreement**.

- 5.2. Clause 5.1 only applies if the **Supplier**.
 - 5.2.1. Gives notice to National Highways within 10 **Working Days** of becoming aware;
 - 5.2.2. Demonstrates that the failure would not have occurred but for the National Highways cause; and
 - 5.2.3. Mitigated the impact of the National Highways cause.
- 5.3. The **Supplier** acknowledges and agrees that National Highways have only reviewed the **SEDPS Standard Selection Questionnaire** to check but not to verify:
 - 5.3.1. The **Supplier's** legal status;
 - 5.3.2. That neither the **Supplier**, nor any person who is a member of the administrative, management or supervisory body of the **Supplier**, or who represents, controls or makes decisions on behalf of the **Supplier** has been convicted of the criminal offences listed in section 2 of the **SEDPS Standard Selection Questionnaire**; and
 - 5.3.3. That the **Offered Deliverables** are suitable for inclusion in the **SEDPS**.
- 5.4. If National Highways determines, in its absolute discretion, that the **Supplier** responses to the **SEDPS Standard Selection Questionnaire** are appropriate to permit the **Supplier** to be admitted to the **SEDPS**, National Highways may include the **Offered Deliverables** in the **SEDPS** on the **Terms** of this **SEDPS Agreement**.
- 5.5. The **Supplier** acknowledges and agrees that the **Buyer** may choose to carry out any checks on the **Supplier** permitted by the **Regulations** before a **Buyer Agreement** is awarded.
- 5.6. National Highways may remove the **Supplier's Offered Deliverables** or any **Information** relating to them from the **SEDPS**, including where the content breaches intellectual property **Law**, contains sensitive **Personal Data** or includes material which may be considered obscene or defamatory.

6. RECORD KEEPING AND REPORTING

- 6.1. The **Supplier** must keep and maintain full and accurate records and accounts on everything to do with the **SEDPS Agreement**.
 - 6.1.1. During the **Term**;

- 6.1.2. For seven years after the end of the **Term**; and
- 6.1.3. In accordance with **UK GDPR**.
- 6.2. National Highways or an auditor can audit the **Supplier**.
- 6.3. The **Supplier** must allow any auditor appointed by National Highways access to their premises to verify all contract accounts and records of everything to do with the **SEDPS Agreement** and provide copies for the audit.
- 6.4. The **Supplier** must provide **Information** to the auditor and reasonable co-operation at their request.
- 6.5. Where the audit of the **Supplier** is carried out by an auditor, the auditor shall be entitled to share any **Information** obtained during the audit with National Highways.
- 6.6. The **Supplier** shall on request of National Highways on an annual basis confirm that the warranty given by the **Supplier** in clause 3.9 of the **SEDPS Agreement** remains true and accurate. Failure to give this confirmation will be grounds for termination of the **SEDPS Agreement** as a breach of clause 3.10 under clause 10.2.1.5 of the **SEDPS Agreement**.

7. SUPPLIER STAFF

- 7.1. The **Supplier Staff** involved in the performance of each **Buyer Agreement** must:
 - 7.1.1. Be appropriately trained and qualified;
 - 7.1.2. Be vetted using **Good Industry Practice** and in accordance with the **Staff Vetting Procedures**; and
 - 7.1.3. Comply with all conduct requirements when on the **Buyer's** premises.
- 7.2. National Highways may require the **Supplier** to ensure that any person employed in the delivery of the **Deliverables** has undertaken a Disclosure and Barring Service check.
- 7.3. The **Supplier** shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the **SEDPS Agreement** or a **Buyer Agreement**, relevant to the work of National Highways or a **Buyer**, or is of a type otherwise advised by National Highways (each such conviction a "Relevant Conviction"), or is found by the **Supplier** to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the **Deliverables** under any **Buyer Agreement**.

- 7.4. The **Supplier** indemnifies National Highways against all claims brought by any person employed by the **Supplier** caused by an act or omission of the **Supplier** or any **Supplier Staff**.

8. RIGHTS AND PROTECTION

- 8.1 The **Supplier** warrants and represents that:

- 8.1.1. It has full capacity and authority to enter into and to perform this **SEDPS Agreement** and any **Buyer Agreement**;
- 8.1.2. The **SEDPS Agreement** is executed by its authorised representative;
- 8.1.3. It is a legally valid and existing organisation incorporated in the place it was formed;
- 8.1.4. There are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the **SEDPS Agreement** or any **Buyer Agreement**;
- 8.1.5. It maintains all necessary rights, authorisations, licenses, and consents to perform its obligations under the **SEDPS Agreement** and any **Buyer Agreement**;
- 8.1.6. it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the **SEDPS Agreement** or any **Buyer Agreement**; and
- 8.1.7. It is not impacted by an **Insolvency Event**.
- 8.2. The warranties and representations in clauses 3.9 and 8.1 are repeated each time the **Supplier** provides **Deliverables** under a **Buyer Agreement**.
- 8.3. The **Supplier** indemnifies National Highways against each of the following:
- 8.3.1. Willful misconduct of the **Supplier**, any of its subcontractor and/or **Supplier Staff** that impacts the **SEDPS Agreement**; and
- 8.3.2. Non-payment by the **Supplier** of any tax or National Insurance.
- 8.4. If the **Supplier** becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify National Highways.

9. INTELLECTUAL PROPERTY RIGHTS (IPRS)

- 9.1. The position in relation to ownership and licensing of **New IPR** and **Existing IPRs** is set out in the **Buyer Agreement**. The **Supplier** is required to comply with the requirements contained in any **Buyer Agreement** relating to IPRS.

Party Existing IPR Supplier Supplier Existing IPR New IPR New IPR SEDPS Agreement Supplier Existing IPR SEDPS Agreement Buyer Agreement New IPR Party SEDPS Agreement Party Party Party Party Offered Deliverables Supplier Losses Supplier Buyer Party SEDPS Agreement SEDPS Agreement Buyer Agreement Supplier

10. ENDING THE SEDPS AGREEMENT

10.1. Ending the **SEDPS Agreement** without a reason

National Highways has the right to terminate the **SEDPS Agreement** at any time without reason or liability by giving the **Supplier** not less than 90 days' written notice.

When National Highways can end the **SEDPS Agreement**

- 10.2.1. If any of the following events happen, National Highways has the right to immediately terminate the **SEDPS Agreement** and remove the **Supplier** from the **SEDPS** by issuing a termination notice in writing to the **Supplier**:

10.2.1.1. there is a **Supplier Insolvency Event**;

10.2.1.2. if the **Supplier** is in breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the **Supplier** receiving notice specifying the breach and requiring it to be remedied;

10.2.1.3. there is any material breach of the **SEDPS Agreement**;

10.2.1.4. there is a material default of any Joint **Controller Agreement** relating to the **SEDPS Agreement**;

10.2.1.5. there is a breach of clauses 3.9, 9, 13, 14, 25 or 29;

10.2.1.6. if the **Supplier** repeatedly breaches the **SEDPS Agreement** in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the **Terms and conditions** of the **SEDPS Agreement**;

10.2.1.7. there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) the **Supplier** must re-run the **SEDPS**;

10.2.1.8. if National Highways discovers that the **Supplier** was in one of the situations set out in Section 2 of the **SEDPS Standard Selection Questionnaire** at the time the **SEDPS Agreement** was awarded or is in breach of clause 25.1 of this **SEDPS Agreement**;

10.2.1.9. the **Supplier** or its affiliates embarrass or bring National Highways and its Supply Chain into disrepute or diminish the public trust in them; or

10.2.1.10. the **Supplier** is in breach of clause 4 of this **SEDPS Agreement** in respect of a **Buyer Agreement** and has failed to rectify the issue upon notification of the breach within a reasonable period of time.

10.2.2. If any of the following non-fault based events happen, National Highways has the right to terminate the **SEDPS Agreement** immediately:

10.2.2.1. if there is a change to the **SEDPS Agreement** which cannot be agreed using clause 23 or resolved using clause 31; or

10.2.2.2. if there is a declaration of ineffectiveness in respect of any change to the **SEDPS Agreement**.

When the *Supplier* can end the *SEDPS Agreement*

10.3.1. If the **Supplier** wishes to remove the **Offered Deliverables** from the **SEDPS**, the **Supplier** shall provide National Highways not less than 30 days' written notice, after which time the **SEDPS Agreement** shall terminate.

10.3.2. If the **SEDPS Agreement** is terminated in accordance with clause 10.3.1, any **Buyer** Contracts which the **Supplier** has entered into prior to the date on which this **SEDPS Agreement** terminates will continue to have effect, unless terminated separately in accordance with their **Terms**.

What happens if the *SEDPS Agreement* ends

10.4.1. Where a **Party** terminates the **SEDPS Agreement** under any of clauses 10.1, 10.2.1, 10.2.2, 10.3, 22.4 or 29.3 all of the following apply:

10.4.1.1. accumulated rights of the Parties are not affected;

10.4.1.2. the **Supplier** must promptly delete or return the **NH Data** except where required to retain copies by **Law**;

10.4.1.3. the **Supplier** must promptly return any of National Highways' property provided under the **SEDPS Agreement**; and

10.4.1.4. National Highways shall remove the **Offered Deliverables** from the **SEDPS**.

10.4.2. The following clauses survive the termination of the **SEDPS Agreement**: 6, 7.4, 9, 11, 13, 14, 15, 16, 17, 28.2, 31, 32 and any clauses which are expressly or by implication intended to continue.

10.5 Partially ending and suspending the SEDPS Agreement

10.5.1. Where National Highways has the right to terminate the **SEDPS Agreement** it can terminate or suspend (for any period), all or part of it.

10.5.2. National Highways can only partially terminate or suspend the **SEDPS Agreement** if the remaining parts of it can still be used to effectively **Deliver** the intended purpose.

10.5.3. The Parties must agree (in accordance with clause 23) any necessary variation required by clause 10.5, but the **Supplier** may not reject the variation.

10.5.4. National Highways can still use other rights available, or subsequently available, if it acts on its rights under clause 10.5.

11. HOW MUCH YOU CAN BE HELD RESPONSIBLE FOR AND INSURANCE REQUIREMENTS

11.1. Each **Party's** total aggregate liability under or in connection with the **SEDPS Agreement** (whether in tort, contract or otherwise) in any 12 month period is no more than £189,330.

11.2. No **Party** is liable to the other for:

11.2.1. Any indirect **Losses**; or

11.2.2. Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

11.3. In spite of clause 11.1, neither **Party** limits or excludes any of the following:

11.3.1. Its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

11.3.2. Its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;

11.3.3. Any liability that cannot be excluded or limited by **Law**; or

11.3.4. Its liability to the extent it arises as a result of a default by the **Supplier**, any fine or penalty incurred by National Highways pursuant to **Law** and any costs incurred by National Highways in defending any proceedings which result in such fine or penalty.

- 11.4. Each **Party** must use all reasonable endeavours' to mitigate any Loss or damage which it suffers under or in connection with the **SEDPS Agreement**, including any indemnities.
- 11.5. If more than one **Supplier** is **Party** to the **SEDPS Agreement**, each **Supplier Party** is jointly and severally liable for their obligations under the **SEDPS Agreement**.
- 11.6. During the Term, the Supplier must, at its own cost, maintain in force with a reputable insurance company employer's liability in the amount required by law, and public liability insurance at a minimum amount of £5 million , and must produce to National Highways upon request both the insurance certificate giving details of the cover and the receipt for the current years' premium in respect of each insurance.
- 11.7 In addition to the insurance that the **Supplier** must maintain under the **SEDPS Agreement** as set out in clause 11.6, the **Supplier** must, at its own cost, obtain any additional insurance required under a **Buyer Agreement**, and if no such additional insurance requirement is stated in a **Buyer Agreement** the **Supplier** must ensure it has adequate insurance cover for a **Buyer Agreement** that it has entered into.

12. OBEYING THE LAW

The **Supplier** must not use or allow its subcontractors to use modern slavery, child labour or inhumane treatment.

13. DATA PROTECTION

- 13.1. Where either **Party** considers that the processing of **Personal Data** will be required under the **SEDPS Agreement**, it will consult with the other **Party** and the information set out in Appendix 1 will be completed in accordance with Appendix 1. Where the information set out in Appendix 1 has been completed in accordance with this clause, the **Supplier** must process **Personal Data** and ensure that **Supplier Staff** process **Personal Data** only in accordance with Annex B of the **SEDPS Agreement**.
- 13.2. The **Supplier** must not remove any ownership or security notices in or relating to the **NH Data**.
- 13.3. The **Supplier** must make accessible back-ups of all **NH Data**, stored in an agreed off-site location and send National Highways copies every six months.
- 13.4. The **Supplier** must ensure that any **Supplier** system holding any **NH Data**, including back-up data, is a secure system that complies with the security requirements specified in writing by National Highways.

13.5. If at any time the **Supplier** suspects or has reason to believe that the **NH Data** provided under the **Agreement** is corrupted, lost or sufficiently degraded, then the **Supplier** must notify National Highways and immediately suggest remedial action.

13.6. If the **NH Data** is corrupted, lost or sufficiently degraded so as to be unusable National Highways may either or both:

13.6.1. Tell the **Supplier** to restore or get restored **NH Data** as soon as practical but no later than five **Working Days** from the date that National Highways receives notice, or the **Supplier** finds out about the issue, whichever is earlier; and/or

13.6.2. Restore the **NH Data** itself or using a third **Party**.

13.7. The **Supplier** must pay each **Party's** reasonable costs of complying with clause 13.6 unless National Highways is at fault.

13.8. The **Supplier**:

13.8.1. Must provide National Highways with all **NH Data** in an agreed open format within 10 **Working Days** of a written request;

13.8.2. Must have documented processes to guarantee prompt availability of **NH Data** if the **Supplier** stops trading;

13.8.3. Must securely destroy all Storage Media that has held **NH Data** at the end of life of that media using **Good Industry Practice**;

13.8.4. Securely erase all **NH Data** and any copies it holds when asked to do so by National Highways unless required by **Law** to retain it; and

13.8.5. Indemnifies National Highways against any and all **Losses** incurred if the **Supplier** breaches clause 13 and any **Data Protection Legislation**.

14. WHAT YOU MUST KEEP CONFIDENTIAL

14.1. Each **Party** must:

14.1.1. Keep all **Confidential Information** it receives confidential and secure;

14.1.2. Except as expressly set out in clauses 14.2 to 14.4 or elsewhere in the **SEDPS Agreement**, not disclose, use or exploit the disclosing **Party's Confidential Information** without the disclosing **Party's** prior written consent; and

14.1.3. Immediately notify the disclosing **Party** if it suspects unauthorised access, copying, use or disclosure of the **Confidential Information**.

- 14.2. In spite of clause 14.1, a **Party** may disclose **Confidential Information** which it receives from the disclosing **Party** in any of the following instances:
- 14.2.1. Where disclosure is required by applicable **Law** or by a court with the relevant jurisdiction if the recipient **Party** notifies the disclosing **Party** of the full circumstances, the affected **Confidential Information** and extent of the disclosure;
 - 14.2.2. If the recipient **Party** already had the **Information** without obligation of confidentiality before it was disclosed by the disclosing **Party**;
 - 14.2.3. If the **Information** was given to it by a third **Party** without obligation of confidentiality;
 - 14.2.4. If the **Information** was in the public domain at the time of the disclosure;
 - 14.2.5. If the **Information** was independently developed without access to the disclosing **Party's Confidential Information**;
 - 14.2.6. On a confidential basis, to its auditors;
 - 14.2.7. On a confidential basis, to its professional advisers on a need-to-know basis; or
 - 14.2.8. To the Serious Fraud Office where the recipient **Party** has reasonable grounds to believe that the disclosing **Party** is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 14.3. In spite of clause 14.1, the **Supplier** may disclose **Confidential Information** on a confidential basis to **Supplier Staff** on a need-to-know basis to allow the **Supplier** to meet its obligations under the **SEDPS Agreement**. The **Supplier Staff** must enter into a direct confidentiality **Agreement** with National Highways at its request.
- 14.4. In spite of clause 14.1, National Highways may disclose **Confidential Information** in any of the following cases:
- 14.4.1. On a confidential basis to the employees, agents, consultants and contractors of National Highways;
 - 14.4.2. On a confidential basis to any Crown Body and its officers, employees, consultants and professionals. Any Crown Body receiving such **Confidential Information** shall be entitled to further disclose the **Confidential Information** to other Crown Bodies on the basis that the **Information** is confidential and is not to be disclosed to a third **Party** which is not a Crown Body;

- 14.4.3. If National Highways (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- 14.4.4. To the extent the need for disclosure arises for the purpose of the examination and certification of the accounts of National Highways or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which National Highways is carrying out its public functions; or
- 14.4.5. If National Highways has reasonable grounds to believe that the **Supplier** is involved in activity that may constitute a serious criminal offence and the disclosure is being made to a relevant investigating or enforcement authority; or
- 14.4.6. Under clause 15.
- 14.5. For the purposes of clauses 14.2 to 14.4 references to disclosure on a confidential basis means disclosure under a confidentiality **Agreement** or arrangement including **Terms** as strict as those required in clause 14.
- 14.6. **Transparency Information** is not **Confidential Information**.
- 14.7. The **Supplier** must not make any press announcement or publicise the **SEDPS Agreement** or any part of it in any way, without the prior written consent of National Highways and must take all reasonable steps to ensure that **Supplier Staff** do not either.

15. WHEN YOU CAN SHARE **INFORMATION**

- 15.1. The **Supplier** must tell National Highways within 48 hours if it receives a **Request for Information**.
- 15.2. Within five **Working Days** of National Highways' request the **Supplier** must give National Highways full co-operation and **Information** needed so National Highways can:
 - 15.2.1. Publish the **Transparency Information**;
 - 15.2.2. Comply with any Freedom of **Information** Act (**FOIA**) request; and/or
 - 15.2.3. Comply with any Environmental **Information Regulations** (EIR) request.
- 15.3. National Highways may talk to the **Supplier** to help it decide whether to publish **Information** under clause 5. However, the extent, content and format of the disclosure is National Highways' decision, in its absolute discretion.

16. INVALID PARTS OF THE AGREEMENT

If any part of the **SEDPS Agreement** is prohibited by **Law** or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the **SEDPS Agreement** as much as required and rendered ineffective as far as possible without affecting the rest of the **SEDPS Agreement**, whether it is valid or enforceable.

17. NO OTHER TERMS APPLY

The provisions incorporated into the **SEDPS Agreement** are the entire **Agreement** between the Parties. The **SEDPS Agreement** replaces all previous statements, **Agreements** and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

18. OTHER PEOPLE'S RIGHTS IN AN AGREEMENT

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”) to enforce any **Term** of the **SEDPS Agreement** unless stated (referring to **CRTPA**) in the **SEDPS Agreement**. This does not affect third **Party** rights and remedies that exist independently from **CRTPA**.

19. CIRCUMSTANCES BEYOND YOUR CONTROL

19.1. Any **Party** affected by a **Force Majeure Event** is excused from performing its obligations under the **SEDPS Agreement** while the inability to perform continues, if it both:

19.1.1. Provides written notice to the other **Party**; and

19.1.2. Uses all reasonable measures practical to reduce the impact of the **Force Majeure Event**.

20. RELATIONSHIPS CREATED BY THE AGREEMENT

The **SEDPS Agreement** does not create a partnership, joint venture or employment relationship. The **Supplier** must represent themselves accordingly and ensure others do so.

21. GIVING UP AGREEMENT RIGHTS

A partial or full waiver or relaxation of the **Terms** of the **SEDPS Agreement** is only valid if it is stated to be a waiver in writing to the other **Party**.

22. TRANSFERRING RESPONSIBILITIES

- 22.1. The **Supplier** cannot assign, novate or transfer the **SEDPS Agreement** or any part of the **SEDPS Agreement** without National Highways' written consent.
- 22.2. National Highways can assign, novate or transfer its **SEDPS Agreement** or any part of it to any **Central Government Body**, public or private sector body which performs the functions of National Highways.
- 22.3. When National Highways uses its rights under clause 22.2 the **Supplier** must enter into a novation **Agreement** in the form that National Highways specifies.
- 22.4. The **Supplier** can terminate the **SEDPS Agreement** if it is novated under clause 22.2 to a private sector body that is experiencing an **Insolvency Event**.
- 22.5. The **Supplier** remains responsible for all acts and omissions of the **Supplier Staff** as if they were its own.
- 22.6. If National Highways asks the **Supplier** for details about subcontractors, the **Supplier** must provide details of subcontractors at all levels of the supply chain including:
 - 22.6.1. Their name;
 - 22.6.2. The scope of their appointment; and
 - 22.6.3. The duration of their appointment.

23. CHANGING THE SEDPS AGREEMENT

- 23.1. Either **Party** can request a variation to the **SEDPS Agreement** which is only effective if agreed in writing and signed by both Parties. National Highways is not required to accept a variation request made by the **Supplier**.
- 23.2. For 101(5) of the **Regulations**, if the Court declares any variation to the **SEDPS Agreement** ineffective, the Parties agree that their mutual rights and obligations will be regulated by the **Terms** of the **SEDPS Agreement** as they existed immediately prior to that variation and as if the Parties had never entered into that variation.

24. HOW TO COMMUNICATE ABOUT THE SEDPS AGREEMENT

- 24.1. All notices under the **SEDPS Agreement** must be in writing and are considered effective on the **Working Day of Delivery** as long as they are delivered before 5:00pm on a **Working Day**. Otherwise the notice is effective on the next **Working Day**. An email is effective at 9:00am on the first **Working Day** after sending unless an error message is received.
- 24.2. Notices to National Highways or **Supplier** must be sent to their address in the **SEDPS Agreement**.

24.3. This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

25. PREVENTING FRAUD, BRIBERY AND CORRUPTION

25.1. The **Supplier** must not during the **Term**:

25.1.1. Commit a Prohibited Act or any other criminal offence referred to in Section 2 of the **SEDPS Standard Selection Questionnaire**; or

25.1.2. Do or allow anything which would cause National Highways, including any of its employees, consultants, contractors, subcontractors or agents to breach any of the **Relevant Requirements** or incur any liability under them.

25.2. The **Supplier** must during the **Term**:

25.2.1. Create, maintain and enforce adequate policies and procedures to ensure it complies with the **Relevant Requirements** to prevent a Prohibited Act and require its subcontractors to do the same;

25.2.2. Keep full records to show it has complied with its obligations under clause 25 and give copies to National Highways on request; and

25.2.3. If required by National Highways, within 20 **Working Days** of the first day of the **Term**, and then annually, certify in writing to National Highways, that they have complied with clause 25, including compliance of **Supplier Staff**, and provide reasonable supporting evidence of this on request, including its policies and procedures.

25.3. The **Supplier** must immediately notify National Highways if it becomes aware of any breach of clauses 25.1 or 25.2 or has any reason to think that it, or any of the **Supplier Staff**, has either:

25.3.1. Been investigated or prosecuted for an alleged Prohibited Act;

25.3.2. Been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;

25.3.3. Received a request or demand for any undue financial or other advantage of any kind related to the **SEDPS Agreement**; or

25.3.4. Suspected that any person or **Party** directly or indirectly related to the **SEDPS Agreement** has committed or attempted to commit a **Prohibited Acts**.

25.4. If the **Supplier** notifies National Highways as required by clause 25.3, the **Supplier** must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.

25.5. In any notice the **Supplier** gives under clause 25.3 it must specify the:

25.5.1. Prohibited Act;

25.5.2. Identity of the **Party** who it thinks has committed the Prohibited Act; and

25.5.3. Action it has decided to take.

26. EQUALITY, DIVERSITY AND HUMAN RIGHTS

26.1. The **Supplier** must follow all applicable equality **Law** when they perform their obligations under the **SEDPS Agreement**, including:

26.1.1. Protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

26.1.2. Any other requirements and instructions which National Highways reasonably imposes related to equality **Law**.

26.2. The **Supplier** must take all necessary steps and inform National Highways of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the **SEDPS Agreement**.

27. HEALTH AND SAFETY

27.1. The **Supplier** must perform its obligations meeting the requirements of all applicable **Law** regarding health and safety.

28. TAX

28.1. The **Supplier** must not breach any tax or social security obligations and must enter into a binding **Agreement** to pay any late contributions due, including where applicable, any interest or any fines. National Highways cannot terminate the **SEDPS Agreement** where the **Supplier** has not paid a minor tax or social security contribution.

28.2. Where the **Supplier** or any **Supplier Staff** are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the **Agreement**, the **Supplier** must both:

- 28.2.1. Comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and **Regulations** relating to income tax, the Social Security Contributions and Benefits Act 1992 (including **IR35**) and National Insurance contributions; and
- 28.2.2. Indemnify National Highways against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the **Term** in connection with the provision of the **Deliverables** by the **Supplier** or any of the **Supplier Staff**.
- 28.3. If any of the **Supplier Staff** are **Workers** who receive payment relating to the **Deliverables**, then the **Supplier** must ensure that its contract with the Worker contains the following requirements:
- 28.3.1. National Highways may, at any time during the **Term**, request that the Worker provides **Information** which demonstrates they comply with clause 28.2, or why those requirements do not apply, National Highways can specify the **Information** the Worker must provide and the deadline for responding;
- 28.3.2. The Worker's contract may be terminated at National Highways' request if the Worker fails to provide the **Information** requested by National Highways within the time specified by National Highways;
- 28.3.3. The Worker's contract may be terminated at National Highways' request if the Worker provides **Information** which National Highways considers doesn't demonstrate how it complies with clause 28.3 or confirms that the Worker is not complying with those requirements; and
- 28.3.4. National Highways may supply any **Information** they receive from the Worker to HMRC for revenue collection and management.

29. CONFLICT OF INTEREST

- 29.1. The **Supplier** must take action to ensure that neither the **Supplier** nor the **Supplier Staff** are placed in the position of an actual or potential conflict between the financial or personal duties of the **Supplier** or the **Supplier Staff** and the duties owed to National Highways under the **SEDPS Agreement**, in the reasonable opinion of National Highways (a "Conflict of Interest").
- 29.2. The **Supplier** must promptly notify and provide details to National Highways if a Conflict of Interest happens or is expected to happen.
- 29.3. National Highways can terminate its **SEDPS Agreement** immediately by giving notice in writing to the **Supplier** or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

30. REPORTING A BREACH OF THE AGREEMENT

- 30.1. As soon as it is aware of it the **Supplier** and **Supplier Staff** must report to National Highways any actual or suspected breach of **Law**, clause 12 or clauses 25 to 29.
- 30.2. The **Supplier** must not take any action against any of the **Supplier Staff** who in good faith reports a breach listed in clause 30.1.

31. RESOLVING DISPUTES

- 31.1. If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other **Party**, meet in good faith to resolve the dispute.
- 31.2. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either **Party** does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 31.3 to 31.5.
- 31.3. Unless National Highways refers the dispute to arbitration using clause 31.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
 - 31.3.1. Determine the dispute;
 - 31.3.2. Grant interim remedies; and
 - 31.3.3. Grant any other provisional or protective relief.
- 31.4. The **Supplier** agrees that National Highways has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 31.5. National Highways has the right to refer a dispute to arbitration even if the **Supplier** has started or has attempted to start court proceedings under clause 31.4, unless National Highways has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 31.4.

31.6. The **Supplier** cannot suspend the performance of the **SEDPS Agreement** during any dispute.

32. WHICH LAW APPLIES

This **SEDPS Agreement** and any claim, dispute or difference (whether contractual or non-contractual) arising out of, or connected to it, are governed by English **Law**.

Annex B Processing Data

Status of the *Controller*

1. The Parties acknowledge that for the purposes of the ***Data Protection Legislation***, the nature of the activity carried out by each of them in relation to their respective obligations under the ***SEDPS Agreement*** dictates the status of each ***Party*** under the ***UK GDPR***. A ***Party*** may act as:
 - (a) “***Controller***” in respect of the other ***Party*** who is “***Processor***”;
 - (b) “***Processor***” in respect of the other ***Party*** who is “***Controller***”;
 - (c) “Joint ***Controller***” with the other ***Party***;
 - (d) “Independent ***Controller***” of the ***Personal Data*** where the other ***Party*** is also “***Controller***”,

in respect of certain ***Personal Data*** under a ***SEDPS Agreement*** and shall specify in Appendix 1 (***Processing Personal Data***) which scenario they think shall apply in each situation.

PART 1: Where one *Party* is *Controller* and the other *Party* its *Processor*

2. Where a ***Party*** is a ***Processor***, the only Processing that it is authorised to do is listed in Appendix 1 (***Processing Personal Data***) by the ***Controller*** and may not be determined by the ***Processor***. The ***Term*** “processing” and any associated ***Terms*** are to be read in accordance with Article 4 of the ***UK GDPR***.
3. The ***Processor*** shall notify the ***Controller*** immediately if it considers that any of the ***Controller***’s instructions infringe the ***Data Protection Legislation***.
4. The ***Processor*** shall provide all reasonable assistance to the ***Controller*** in the preparation of any ***Data Protection Impact Assessment*** prior to commencing any Processing. Such assistance may, at the discretion of the ***Controller***, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operation in relation _____ to _____ the ***Offered Deliverables***;
 - (c) an assessment of the risks to the rights and freedoms of ***Data Subjects***; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of ***Personal Data***.

5. The **Processor** shall, in relation to any **Personal Data** processed in connection with its obligations under the **Agreement**:
- (a) process that **Personal Data** only in accordance with Appendix 1 (*Processing Personal Data*), unless the **Processor** is required to do otherwise by **Law**. If it is so required the **Processor** shall notify the **Controller** before processing the **Personal Data** unless prohibited by **Law**;
 - (b) ensure that it has in place **Protective Measures**, which are appropriate to protect against a **Data Loss Event**, which the **Controller** may reasonably reject. In the event of the **Controller** reasonably rejecting **Protective Measures** put in place by the **Processor**, the **Processor** must propose alternative **Protective Measures** to the satisfaction of the **Controller**. Failure to reject shall not amount to approval by the **Controller** of the adequacy of the **Protective Measures**. **Protective Measures** must take account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a **Data Loss Event**;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the **Processor Personnel** do not process **Personal Data** except in accordance with the **SEDPS Agreement** (and in particular Appendix 1 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any **Processor Personnel** who have access to the **Personal Data** and ensure that they:
 - (A) are aware of and comply with the **Processor's** duties under this Annex B, clauses 13 (*Data protection*), 14 (*What you must keep confidential*) and 15 (*When you can share Information*) of the Conditions;
 - (B) are subject to appropriate confidentiality undertakings with the **Processor** or any **Sub-Processor**;
 - (C) are informed of the confidential nature of the **Personal Data** and do not publish, disclose or divulge any of the **Personal Data** to any third **Party** unless directed in writing to do so by the **Controller** or as otherwise permitted by the **Agreement**; and
 - (D) have undergone adequate training in the use, care, protection and handling of **Personal Data**;
 - (d) not transfer **Personal Data** outside of the UK unless the prior written consent of the **Controller** has been obtained and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 **UK GDPR** or section 74 of the **DPA 2018**;

- (ii) the **Controller** or the **Processor** has provided appropriate safeguards in relation to the transfer (whether in accordance with **UK GDPR** Article 46 or section 75 **DPA 2018**) as determined by the **Controller**;
 - (iii) the **Data Subject** has enforceable rights and effective legal remedies;
 - (iv) the **Processor** complies with its obligations under the **Data Protection Legislation** by providing an adequate level of protection to any **Personal Data** that is transferred (or, if it is not so bound, uses its best endeavours to assist the **Controller** in meeting its obligations); and
 - (v) the **Processor** complies with any reasonable instructions notified to it in advance by the **Controller** with respect to the Processing of the **Personal Data**; and
- (e) at the written direction of the **Controller**, delete or return **Personal Data** (and any copies of it) to the **Controller** on termination of the **SEDPS Agreement** unless the **Processor** is required by **Law** to retain the **Personal Data**.
6. Subject to paragraph 7 of this Annex B, the **Processor** shall notify the **Controller** immediately if in relation to it Processing **Personal Data** under or in connection with the **SEDPS Agreement** it:
- (a) receives a **Data Subject Request** (or purported **Data Subject Request**;
 - (b) receives a request to rectify, block or erase any **Personal Data**;
 - (c) receives any other request, complaint or communication relating to either **Party**'s obligations under the **Data Protection Legislation**;
 - (d) receives any communication from the **Information Commissioner** or any other regulatory authority in connection with **Personal Data** Processed under the **SEDPS Agreement**;
 - (e) receives a request from any third **Party** for disclosure of **Personal Data** where compliance with such request is required or purported to be required by **Law**; or
 - (f) becomes aware of a **Data Loss Event**.
7. The **Processor**'s obligation to notify under paragraph 6 of this Annex B shall include the provision of further **Information** to the **Controller**, as details become available.
8. Taking into account the nature of the Processing, the **Processor** shall provide the **Controller** with full assistance in relation to either **Party**'s obligations under **Data Protection Legislation** and any complaint, communication or request made under paragraph 6 of this Annex B (and insofar as possible within the timescales reasonably required by the **Controller**) including but not limited to promptly providing:

- (a) the **Controller** with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the **Controller** to enable it to comply with a **Data Subject Request** within the relevant timescales set out in the **Data Protection Legislation**;
 - (c) the **Controller**, at its request, with any **Personal Data** it holds in relation to a **Data Subject**;
 - (d) assistance as requested by the **Controller** following any **Data Loss Event**; and/or
 - (e) assistance as requested by the **Controller** with respect to any request from the **Information Commissioner's Office**, or any consultation by the **Controller** with the **Information Commissioner's Office**.
9. The **Processor** shall maintain complete and accurate records and **Information** to demonstrate its compliance with this Annex B. This requirement does not apply where the **Processor** employs fewer than 250 staff, unless:
- (a) the **Controller** determines that the Processing is not occasional;
 - (b) the **Controller** determines the Processing includes special categories of data as referred to in Article 9(1) of the **UK GDPR** or **Personal Data** relating to criminal convictions and offences referred to in Article 10 of the **UK GDPR**; or
 - (c) the **Controller** determines that the Processing is likely to result in a risk to the rights and freedoms of **Data Subjects**.
10. The **Processor** shall allow for audits of its Data Processing activity by the **Controller** or the **Controller's** designated auditor.
11. Each **Party** shall designate its own **Data Protection Officer** if required by **Data Protection Legislation**.
12. Before allowing any **Sub-Processor** to Process any **Personal Data** related to the **SEDPS Agreement**, the **Processor** must:
- (a) notify the **Controller** in writing of the intended **Sub-Processor** and Processing;
 - (b) obtain the written consent of the **Controller**;
 - (c) enter into a written **Agreement** with the **Sub-Processor** which give effect to the **Terms** set out in this Annex B such that they apply to the **Sub-Processor**; and
 - (d) provide the **Controller** with such **Information** regarding the **Sub-Processor** as the **Controller** may reasonably require.
13. The **Processor** shall remain fully liable for all acts or omissions of any of its **Sub-Processors**.
14. The Parties agree to take account of any guidance issued by the **Information Commissioner's Office**. National Highways may on not less than thirty

15. **Working Days'** notice to the **Supplier** amend the **Agreement** to ensure that it complies with any guidance issued by the **Information Commissioner's** Office.

PART 2: Where the Parties are Joint Controllers of Personal Data

16. In the event that the Parties are **Joint Controllers** in respect of **Personal Data** under the **SEDPS Agreement**, the Parties shall prepare and agree in writing such wording as is necessary to comply with GDPR Article 26 within 28 days of the date of the **SEDPS Agreement**.

PART 3: Independent Controllers of Personal Data

17. With respect to **Personal Data** provided by one **Party** to another **Party** for which each **Party** acts as **Controller** but which is not under the Joint Control of the Parties, each **Party** undertakes to comply with the applicable **Data Protection Legislation** in respect of their Processing of such **Personal Data** as **Controller**.
18. Each **Party** shall Process the **Personal Data** in compliance with its obligations under the **Data Protection Legislation** and not do anything to cause the other **Party** to be in breach of it.
19. Where a **Party** has provided **Personal Data** to the other **Party** in accordance with paragraph 7 of this Annex B above, the recipient of the **Personal Data** will provide all such relevant documents and **Information** relating to its data protection policies and procedures as the other **Party** may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 **UK GDPR** in respect of the Processing of **Personal Data** for the purposes of the **SEDPS Agreement**.
21. The **Supplier** shall indemnify National Highways against any **Losses**, damages, cost or expenses incurred by National Highways arising from, or in connection with, any breach of the **Supplier's** obligations under Part 3 of this Annex B
22. The provisions of Part 3 of this Annex B shall apply during the continuance of the **SEDPS Agreement** and indefinitely after its expiry or termination.

Appendix 1 - Processing *Personal Data*

This Appendix shall be completed by the **Controller**, who may take account of the view of the **Processor**, however the final decision as to the content of this Appendix shall be with National Highways at its absolute discretion.

1. The contact details of National Highways' **Data Protection Officer** are: [Insert Contact details]
2. The contact details of the **Supplier's Data Protection Officer** are: [Insert Contact details]
3. The **Processor** shall comply with any further written instructions with respect to Processing by the **Controller**.
4. Any such further instructions shall be incorporated into this Appendix.

Description	Details
<p>Identity of Controller for each Category of Personal Data</p>	<p>National Highways is Controller and the Supplier is Processor The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 of Annex B and for the purposes of the Data Protection Legislation, National Highways is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> • [Insert the scope of Personal Data which the purposes and means of the Processing by the Supplier is determined by National Highways] <p>The Supplier is Controller and National Highways is Processor The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and National Highways is the Processor in accordance with paragraph 2 to paragraph 15 of Annex B of the following Personal Data:</p> <ul style="list-style-type: none"> • [Insert the scope of Personal Data which the purposes and means of the Processing by National Highways is determined by the Supplier] <p>The Parties are Joint Controllers The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p>

	<ul style="list-style-type: none"> • [Insert the scope of Personal Data which the purposes and means of the Processing is determined by both Parties together] <p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details of Supplier Personnel for which the Supplier is the Controller, • Business contact details of any directors, officers, employees, agents, consultants and contractors of National Highways (excluding the Supplier Personnel) engaged in the performance of National Highways’ duties under the Contract) for which National Highways is the Controller, • [Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that National Highways cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by National Highways] <p>[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</p>
Duration of the Processing	[Clearly set out the duration of the Processing including dates]
Nature and purposes of the Processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>

Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary Workers), customers/ clients, Suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
International transfers and legal gateway	<i>[Explain where geographically Personal Data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract].</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under domestic Law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

Annex C
Buyer Agreement

The SEDPS Buyer Agreement can be found on our webpage linked below.
<https://nationalhighways.co.uk/suppliers/becoming-a-supplier/social-enterprises/>

Annex D

SEDPS Social Value Objectives

When delivering the services subject to the SEDPS, your organisation will need to deliver against the following SEDPS Social Value Objectives:

1. Positively impact community wellbeing: addressing health-related issues and improving connectivity, amenities, education and heritage programmes for communities
2. Positively impact economic prosperity: new skills, jobs, supply chains and delivering improvements in regions across England, Scotland or Wales
3. Positively improve the environment: making sustainable decisions that conserve natural resources and enhance ecosystems
4. Positively improve equality, diversity and inclusion: the creation of a more equal society by increasing opportunities for under-represented groups
5. Influence staff, suppliers, customers, and communities to deliver social value objectives
6. Improve and raise awareness of unmet community and social needs
7. Assist disabled* people to integrate into the labour market and provide meaningful employment opportunities or training, and social support to those who may otherwise be excluded from the workforce due to their disability
8. Assist disadvantaged** people to integrate into the labour market and provide meaningful employment opportunities or training, and social support to those who may otherwise be excluded from the workforce or located in deprived areas

The definitions of disabled* and disadvantaged** can be found in Annex C of the A1 Overview of the SEDPS document.