

Conditions of Contract for the Provision of Services

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The Authority	The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU acting as part of the Crown
The Contractor	Eggplant which is a company registered in England under company number 6673424 and whose registered office is at 6 Snow Hill, London, EC1A 2AY
Date	28 th May 2020

1. Background

1.1 The Government must protect the health and well-being of UK citizens. The COVID-19 outbreak is a Public Health Emergency of International Concern (PHEIC) as declared by the World Health Organisation on 30 Jan 2020. The WHO Director General characterised COVID-19 as a pandemic on 11 Mar 2020. COVID-19 is serious and its consequences pose a risk to life. Cabinet Office published PPN 01/20: Responding to COVID-19 on procuring with extreme urgency in March 2020 which states that contracting authorities may enter into contracts without competing or advertising the requirement where certain tests are met.

- 1) There are genuine reasons for extreme urgency as there is a significant public health risk requiring immediate action as a result of COVID-19;
- 2) The COVID-19 situation is novel and the Contracting Authority could not have reasonably foreseen these events;
- 3) It is not possible to comply with the timescales of another procedure due to the urgent requirement to obtain the [supplies] being contracted for. Additionally, there are many buyers competing for the same supplies. It is imperative that security of supply is maintained. Demand for equipment is high and there is little or no incentive for suppliers to participate in competitive procurement procedures;
- 4) The situation is not attributable to the contracting authority.

As this requirement meets the four tests the Authority not placed a contract notice in the Official Journal of the European Union.

2. The Contract

2.1 This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Contractor undertake to comply with the provisions of the Schedules in the performance of this Contract.

2.2 The Contractor shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

2.3 The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

PROJECT_1545
Conditions of Contract for the Provision of Services

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Tender
Schedule 6	Pricing
Schedule 7	Contract Monitoring
Schedule 8	Commercially Sensitive Information
Schedule 9	Variation Form
Schedule 10	Staff Transfer
Schedule 11	Key Personnel
Schedule 12	Exit Arrangements
Schedule 13	Processing, Personal Data and Data Subjects

Signed by the authorised representative of THE AUTHORITY

Name:	[Redacted]	Signature	[Redacted]
Position:	[Redacted]		

Signed by the authorised representative of THE CONTRACTOR

Name:	[Redacted]	Signature	[Redacted]
Position:	[Redacted]		

Schedule 1 - Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 15 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

2 Term

- 2.1 This Contract shall commence on the Commencement Date **16/05/2020** and the Term of this Contract shall expire on **31/07/2020** (“the **Expiry Date**”).

3 Authority Representative and Contractor Representative

- 3.1 The contract managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

- [Redacted]

- 3.1.2 for the Contractor:

- [Redacted]

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Authority:

- [Redacted]

- 4.1.2 for the Contractor:

- [Redacted]

5 Order of precedence

- 5.1 Subject always to Clause 1.3 of Schedule 3, in the event of any conflict between any parts of this Contract the order of precedence shall be:

- 5.1.1 Schedule 1 (Key Provisions);

- 5.1.2 Schedule 4 (Specification);

- 5.1.3 Schedule 5 (Tender) (but only in respect of the Authority's requirements);
- 5.1.4 Schedule 2 (General Terms and Conditions);
- 5.1.5 Schedule 8 (Commercially Sensitive Information);
- 5.1.6 Schedule 10 (Staff Transfer);
- 5.1.7 Schedule 3 (Definitions and Interpretations); and
- 5.1.8 the order in which all subsequent Schedules, if any, appear.

6 Application of TUPE at the commencement of the provision of Services

N/A

Optional Key Provisions

7 Implementation phase

7.1 N/A

8 Services Commencement Date (where the Services are to start at a date after the Commencement Date)

8.1 N/A.

9 Insurance

9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.

9.2 The Supplier will ensure that:

- during this Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000;
- the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit;
- all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date;
- all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date.

9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing

policies bought under the Framework Agreement.

9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:

- a broker's verification of insurance;
- receipts for the insurance premium;
- evidence of payment of the latest premiums due.

9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:

- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances;
- hold all insurance policies and require any broker arranging the insurance to hold 18 any insurance slips and other evidence of insurance.

9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

9.7 The Supplier will notify the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.

9.8 The Supplier will be liable for the payment of any:

- premiums, which it will pay promptly;
- excess or deductibles and will not be entitled to recover this from the Buyer.

10 Inclusion of a Change Control Process

10.1 N/A

11 Guarantee

11.1 N/A

12 Termination for convenience X (only applicable to the Contract if this box is checked and Clause 12 of this Schedule 1 is completed)

12.1 The notice period needed for Ending the Contract is at least 30 Working Days from the date of written notice for undisputed sums or at least 30 days from the date of written notice for Ending without cause.

13 Measures to promote tax compliance

13.1 N/A

14 Authority step-in rights

- 14.1 If the Contractor is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights.

15 Exit and Service Transfer

- 15.1 In the event of the termination or expiry of the Contract for any reason the Contractor shall provide the support to the Authority in accordance with the requirements with their respective obligations as set out in Schedule 12. The Contractor shall co-operate with the Authority and/or the Replacement Contractor to the extent reasonably required to facilitate the smooth migration of the Services from the Contractor to the Authority or the Replacement Contractor.
- 15.2 The Contractor shall, Exit based on the principles set out in Schedule 12 for the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination or expiry of the Contract.

16. Supply Chain Visibility

16.1N/A

Schedule 2 - General Terms and Conditions

1 PROVISION OF SERVICES

- 1.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
 - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
 - 1.1.4 in accordance with the Law;
 - 1.1.5 in accordance with the Anti-slavery Policy; and
 - 1.1.6 in accordance with Good Industry Practice.
- 1.2 The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 1.3 Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Contractor shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Contractor shall comply with the full Implementation Plan.
- 1.4 The Contractor shall commence delivery of the Services on the Services Commencement Date.
- 1.5 The Contractor shall comply fully with its obligations set out in the Specification and the Tender.
- 1.6 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 1.7 The Contractor shall notify the Authority as soon as it becomes aware of:
 - 1.7.1 any breach, or potential breach, of the Anti-slavery Policy; or
 - 1.7.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 1.8 If required by the Authority, the Contractor shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited

to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy.

2 EXTENSION

- 2.1 This Contract can be extended by the Authority for two 2 periods of up to four (4) weeks each, by giving the Supplier one (1) weeks written notice before its expiry.

3 CONTRACT PRICE

- 3.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contractor the Contract Price in accordance with Clause 4 (Payment and VAT) of this Schedule 2. The Contract Price shall remain fixed for the Term.

4 PAYMENT AND VAT

- 4.1 Where the Contractor submits an invoice to the Authority in accordance with Clause 4.4 of this Schedule 2 the Authority will consider and verify that invoice in a timely fashion.
- 4.2 The Authority shall pay the Contractor any sums due under such invoice no later than a period of five (5) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 4.3 Where the Authority fails to comply with Clause 4.1 of this Schedule 2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2 after a reasonable time has passed.
- 4.4 The Contractor shall submit an invoice to the Authority Monthly in arrears. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice. Where travel and subsistence is claimed, all claims must comply with the provisions set out in the Schedule 6 and must be accompanied by appropriate receipts to cover the total amount claimed.
- 4.5 The Authority shall be entitled to withhold payment due under Clause 4 (Payment and VAT) of this Schedule 2 for so long as the Contractor, in the Authority's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 21.11 of this Schedule 2. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.

ELECTRONIC INVOICING

Payment method: The payment method for this Contract is BACS

Payment profile: The payment profile for this Contract is in arrears only.

Invoice details:

The Supplier will issue electronic invoices in arrears for services only. Each invoice will be supported by completed timesheets, authorised by an appropriate person within the Supplier.

The Authority will pay the Supplier within 5 days of receipt of a valid invoice.

Invoices will be sent to:

[Redacted]

- 4.6 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 4.7 For the purposes of clause 4.6, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

VAT

- 4.8 The Contractor shall add VAT to the Contract Price at the prevailing rate in accordance with applicable law.
- 4.9 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 09 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 4.10 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 23 (Termination on Default) of this Schedule 2 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.11 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under the Contract, the Contractor shall:
- 4.11.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 4.11.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Contractor or any Contractor Personnel.
- 4.12 In the event that any one of the Contractor Personnel is a Worker as defined in Clause 1 (Definitions) of Schedule 3 who receives consideration relating to the Services, then, in addition to its obligations under Clause 4.9 of this Schedule 2, the Contractor shall ensure that its contract with the Worker contains the following requirements:
- 4.12.1 that the Authority may, at any time during the Term, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 4.11 of this Schedule 2, or why those requirements do not apply to it. In such case, the

Authority may specify the information which the Worker must provide and the period within which that information must be provided;

4.12.2 that the Worker's contract may be terminated at the Authority's request if:

- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.10.1 of this Schedule 2; and/or
- (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 0 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and

4.12.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

5. PRICE ADJUSTMENT ON EXTENSION OF TERM

5.1 The Contract Price shall apply for the Term including any extension period the Authority may request.

6 WARRANTIES AND REPRESENTATIONS

6.1 The Contractor warrants and undertakes to the Authority that:

- 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 6.1.2 in entering the Contract it has not committed any Fraud;
- 6.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 6.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Contract;
- 6.1.5 it is not subject to any contractual obligation, compliance with which is likely to affect its ability to perform its obligations under the Contract;
- 6.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 6.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

- 6.1.8 in the three (3) years prior to the Commencement Date:
- (c) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern, ability to fulfil its obligations under the Contract or provide the Services; and
- 6.2 The Contractor warrants and undertakes to the Authority that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 6.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 6.2.2 promptly provide to the Authority:
- (a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 6.3 The Contractor warrants and undertakes to the Authority that:
- 6.3.1 its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and
- 6.3.2 neither the Contractor nor any of its Contractor Personnel:
- (a) has been has been convicted of any offence involving slavery and human trafficking; and
 - (b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
- 6.3.3 it undertakes its business in a manner that is consistent with the Anti-slavery Policy.
- 6.4 The Contractor shall implement due diligence procedures for its own suppliers, Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

7 CHANGE CONTROL PROCESS

- 7.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender, as may be requested by the Authority from time to time.
- 7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed by both parties in writing.

8 KEY PERSONNEL

- 8.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 8.2 The Contractor shall not remove or replace any Key Personnel unless:
- 8.2.1 requested to do so by the Authority;
 - 8.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 8.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 8.2.4 the Contractor obtains the Authority's prior written consent.
- 8.3 The Authority shall not unreasonably withhold its consent under Clause 8.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

9 CONTRACTOR PERSONNEL

- 9.1 At all times, the Contractor shall ensure that:
- 9.1.1 each of the Contractor Personnel responsible for providing the Services is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 9.1.2 there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;
 - 9.1.3 only those people who are authorised by the Contractor are involved in providing the Services; and
 - 9.1.4 all of the Contractor Personnel comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Premises of the Authority.

- 9.2 The Authority may refuse to grant access to and remove any of the Contractor Personnel who do not comply with Clause 9.1.4 of this Schedule 2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.
- 9.3 The Contractor shall replace any of the Contractor Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and the Services and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.
- 9.6 If the Contractor fails to comply with Clause 9.4 of this Schedule 2 within two (2) weeks of the date of the request and, in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract with immediate effect by giving written notice to the Contractor at any time after the end of that two (2) week period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with Clause 9.4 of this Schedule 2 shall be final and conclusive.

10 MANNER OF CARRYING OUT THE SERVICES

- 10.1 The Contractor shall begin performing the Services on the Services Commencement Date and continue to perform them for the Term. The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 10.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

- 10.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

11 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

- 11.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative to ensure the services are carried out in accordance with the contract.

12 RIGHT OF AUDIT

- 12.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

- 12.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

- 12.3 For the purpose of:

12.3.1 the examination and certification of the Authority's accounts; or

12.3.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

13 PROPERTY

- 13.1 N/A

14 RECOVERY OF SUMS DUE

- 14.1 The Authority may set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor under this Contract or under any agreement between the Contractor and the Authority.

15 CONFIDENTIAL INFORMATION

- 15.1 For the purposes of this Clause, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly Confidential Information.

- 15.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
- 15.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without the Disclosing Party's prior written consent;
 - 15.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
 - 15.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 Clause 15.1 of this Schedule 2 shall not apply to the extent that:
- 15.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
 - 15.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;
 - 15.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
 - 15.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.3.5 it is independently developed without access to the other Party's Confidential Information.
- 15.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 15.5 The Contractor may only disclose the Confidential Information of the Authority to the Contractor Personnel directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

- 15.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Confidential Information of the Authority received otherwise than for the purposes of the Contract and the provision of the Services.
- 15.7 At the written request of the Authority, the Contractor shall procure that Contractor Personnel identified in the Authority's request shall sign a confidentiality undertaking (in a form acceptable to the Authority) prior to commencing any work in accordance with the Contract.
- 15.8 The Authority may disclose the Confidential Information of the Contractor:
- 15.8.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 15.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 15.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 15.8.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
 - 15.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - 15.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 15 (Confidential Information).
- 15.9 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Confidential Information of the Contractor is disclosed pursuant to Clause 15.3 of this Schedule 2 is made aware of the Authority's obligations of confidentiality.
- 15.10 Nothing in this Clause 15 (Confidential Information) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.11 Failure by the Contractor to comply with any of its obligations under this Clause 15 (Confidential Information) shall be an irremediable material breach of this Contract and the Authority shall be entitled to terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.

16 AUTHORITY DATA

- 16.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 16.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.
- 16.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format the Authority specifies.
- 16.4 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 16.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 16.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 16.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 16.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
 - 16.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 16.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

17 PROTECTION OF PERSONAL DATA

Status of the Controller

- 17.1 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 this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) “Controller” (where the other Party acts as the “Processor”);
 - (b) “Processor” (where the other Party acts as the “Controller”);
 - (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);

- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 13 (Processing, Personal Data and Data Subjects) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

- 17.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 13 (Processing, Personal Data and Data Subjects) by the Controller.
- 17.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 17.4 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 operations in relation to the Services;
 - (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.
- 17.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with Schedule 13 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 16 (Authority Data), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken 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 this Contract (and in particular Schedule 13 (Processing, Personal Data and Data Subjects));
 - (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 Clause, Clauses 15 (Confidential Information) and 16 (Authority Data);
 - (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 this Contract; and
 - (D) have undergone; and
 - (D) adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Section 75 of the DPA 2018) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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
 - (iv) 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 Contract unless the Processor is required by Law to retain the Personal Data.

17.6 Subject to Clause 17.7, the Processor shall notify the Controller immediately if 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 this Contract;
 - (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.
- 17.7 The Processor's obligation to notify under Clause 17.6 shall include the provision of further information to the Controller in phases, as details become available.
- 17.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.6 (and insofar as possible within the timescales reasonably required by the Controller) including by 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.
- 17.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. 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 GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 17.12 Before allowing any Sub-processor to process any Personal Data related to this 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 Clause 17 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.
- 17.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 17.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information
- 17.16 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 17.17 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 13 (Processing, Personal Data and Data Subjects).
- 17.18 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 13 (Processing, Personal Data and Data Subjects).
- 17.19 Notwithstanding the general application of Clauses 17.2 to 17.15 to Personal Data, where the Contractor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 17.16 to 17.19.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 All Intellectual Property Rights in any guidance, know-how, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**");

18.1.1 furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and

18.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;

and the Contractor shall not, and shall ensure that the Contractor Personnel shall not, (except when necessary for the performance of the Contract) without prior written consent, use or disclose any Intellectual Property Rights in the IP Materials.

18.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 18 of this Schedule 2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute such assignment.

18.3 The Authority hereby grants a royalty free, non-exclusive, licence (with no right to sub-licence) for the duration of the Term to the Contractor to use all Intellectual Property which may subsist in the IP Materials prepared in accordance with Clause 18 of this Schedule 2. This licence shall take effect on the date of the Contract.

18.4 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.

18.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract, the Services or the performance thereof.

18.6 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain such Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.

18.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer

or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

- 18.7.1 items or materials based upon designs supplied by the Authority; or
 - 18.7.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 18.8 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 18.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 18.9.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 18.9.2 shall take due and proper account of the interests of the Authority; and
 - 18.9.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 18.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 18.7.1 or 18.7.2 of this Schedule 2.
- 18.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 18.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or, in the reasonable opinion of the Contractor, is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 18.12.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

- 18.12.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority; and
- 18.12.3 in the event that the Contractor is unable to comply with Clauses 18.12.1 or 18.12.2 within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by written notice.

19. LIABILITY

19.1 Neither Party excludes or limits liability to the other Party for:

- i. death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;
- ii. bribery or Fraud by it or its employees;
- iii. fraudulent misrepresentation; or
- iv. any liability to the extent that it cannot be excluded or limited by any applicable law.

19.2 The Contractor does not exclude or limit its liability in respect of the indemnity at Clause 18.7 and in each case whether before or after the making of a demand pursuant to the indemnity therein.

19.3 Subject to Clauses 19.4, 19.5, 19.6 and 19.7 of this Schedule 2, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

19.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

19.5 Subject always to Clauses 19.1, 19.2, 19.6, 19.7 and 19.8 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the greater of:

19.5.1 [£5,000,000]; or

19.5.2 [one hundred and twenty five per cent (125%) of the total Contract Price paid or payable by the Authority to the Contractor for the Services.]

19.6 Subject always to Clause 19.1, in no event shall either Party be liable to the other for any:

- 19.6.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or

- 19.6.2 loss of savings (whether anticipated or otherwise); and/or
- 19.6.3 indirect or consequential loss or damage.
- 19.7 If the total Contract Price paid or payable by the Authority to the Contractor over the Term:
 - 19.7.1 is less than or equal to [£1,000,000] then the figure of [£5,000,000] at Clause 19.5 of this Schedule 2 shall be replaced with [£1,000,000];
 - 19.7.2 is less than or equal to [£3,000,000] but greater than [£1,000,000], then the figure of [£5,000,000] at Clause 19.5 of this Schedule 2 shall be replaced with [£3,000,000]
 - 19.7.3 is equal to, exceeds or will exceed [£10,000,000] then the figure of [£5,000,000] at Clause 19.5 of this Schedule 2 shall be replaced with [£10,000,000] and the figure of one hundred and twenty five percent (125%) at Clause 19.5 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%).
- 19.8 Subject always to Clauses 19.1, 19.2, 19.6 and 19.9 of this Schedule 2 the Contractor's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed [£10 million];
- 19.9 The Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
 - 19.9.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 19.9.2 any wasted expenditure or charges;
 - 19.9.3 the additional costs of procuring replacement Services for the remainder of the Term, which shall include any incremental costs associated with such replacement Services above those which would have been payable under the Contract;
 - 19.9.4 any compensation or interest paid to a third party by the Authority; and
 - 19.9.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 19.10 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 19.11 Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the performance by the Contractor of any and all of its obligations under the Contract and in respect of any losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor.
- 19.12 Clause 19 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

20. INSURANCE

- 20.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 20.2 The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.
- 20.3 Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 20.4 The Contractor shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Contractor pursuant to Clause 20 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 20.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 20.6 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 19 (Liability) of this Schedule 2.

21. TRANSFER AND SUB-CONTRACTING

- 21.1 The Contractor shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the Contract or any part of it without the prior written consent of the Authority.

22. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 22.1 The notice period needed for Ending the Contract is at least 30 Working Days from the date of written notice for undisputed sums or at least 30 days from the date of written notice for Ending without cause.

23. TERMINATION ON DEFAULT

- 23.1 The Authority will have the right to End this Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:
- a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied
 - any fraud

- 23.2 A Party can End this Contract at any time with immediate effect by written notice if:
- the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due) and, if that breach is remediable, fails to remedy it within 15 Working Days of being notified in writing to do so
 - an Insolvency Event of the other Party happens
 - the other Party ceases or threatens to cease to carry on the whole or any material part of its business
- 23.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier must notify the Authority and allow the Authority 5 Working Days to pay. If the Authority doesn't pay within 5 Working Days, the Supplier may End this Contract.
- 23.4 A Party who isn't relying on a Force Majeure event will have the right to End this Call-Off Contract if clause 41 applies.
- 23.3.1 if the Contractor does not commence delivery of the Services by the Services Commencement Date, if any;
- 23.3.2 pursuant to and in accordance with the Key Provisions and Clauses 9.6, 15.11, 18.2.3, 26.4, 28.5, 31.2, 34.4 and 41.1 of this Schedule 2;
- 23.3.3 where the warranty given by the Contractor pursuant to Clause 6.2 of this Schedule 2 is materially untrue, the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 6.2 of this Schedule 2, or the Contractor fails to provide details of proposed mitigating factors as required by Clause 6.2 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or

24 DISRUPTION

- 24.1 The Contractor shall take reasonable care to ensure that, in the performance of its obligations under the Contract, it does not disrupt the operations of the Authority, its employees or any other contractor employed or engaged by the Authority.

25 RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CONTRACT

- 25.1 Upon expiry or earlier termination (for any reason) of this Contract, the Contractor shall at the request of the Authority and at the Contractor's cost:
- 25.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services (but excluding copies of such Confidential Information, Personal Data or IP Materials that the Contractor is required to retain pursuant to the Law or for regulatory purposes);

- 25.1.2 except where the retention of Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Personal Data and provide written confirmation to the Authority that the data has been destroyed;
 - 25.1.3 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 25.1.4 vacate and procure that the Contractor Personnel vacate any premises of the Authority occupied for the purposes of providing the Services;
 - 25.1.5 return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);
 - 25.1.6 comply with its obligations under any agreed exit plan; and
 - 25.1.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any Replacement Contractor to conduct due diligence.
- 25.2 If the Contractor fails to comply with Clause 25.1.1 and 25.1.2 of this Schedule 2, the Authority may recover possession of the items mentioned in those Clauses. The Contractor shall grant, and shall procure that any Sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Sub-contractors where any such items may be held.

26 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 26.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 23 (Termination on Default) of this Schedule 2.
- 26.2 Should the Authority be of the view, acting reasonably, that the Contractor can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 26.3 Without prejudice to its right under Clause 14 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 26.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the

failure and the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

- 26.5 In the event that the Contractor fails to comply with the above the Authority may terminate the Contract with immediate effect by giving written notice.

27 WAIVER AND CUMULATIVE REMEDIES

- 27.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 27.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 38 (Service of Notices and Communications) of this Schedule 2.
- 27.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 27.4 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28 PUBLICITY

- 28.1 The Contractor shall not and shall procure that its Sub-contractors shall not:
- 28.1.1 make any press announcements or publicise the Contract in any way; or
 - 28.1.2 use the Authority's name or brand in any promotion or marketing or announcement,
- without the prior written consent of the Authority.
- 28.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 28.3 The provisions of this Clause 30 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

29 OFFICIAL SECRETS ACTS AND FINANCE ACT

- 29.1 The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:
- 31.1.1 the Official Secrets Acts 1911 to 1989; and

31.1.2 section 182 of the Finance Act 1989.

31.2 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor or any of the Contractor Personnel do not comply with Clause 29.1 of this Schedule 2.

30 PREVENTION OF FRAUD AND BRIBERY

30.1 The Contractor warrants and undertakes to the Authority that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:

30.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

30.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

30.2 The Contractor shall not during the Term:

30.2.1 commit a Prohibited Act; and/or

30.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

30.3 The Contractor shall during the Term:

30.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

30.3.2 keep appropriate records of its compliance with its obligations under Clause 32.3.1 of this Schedule 2 and make such records available to the Authority on request;

30.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause of all persons associated with the Contractor or its Sub-contractors who are responsible for supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence as the Authority may reasonably request; and

30.3.4 have, maintain and, where appropriate, enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.

30.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 30.1 of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:

- 30.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 30.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 30.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 30.5 If the Contractor makes a notification to the Authority pursuant to Clause 32.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Right of Audit) of this Schedule 2.
- 30.6 If the Contractor breaches Clause 30.1 of this Schedule 2, the Authority may by notice:
- 30.6.1 require the Contractor to remove from the performance of the Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or
 - 30.6.2 immediately terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.
- 30.7 Any notice served by the Authority under Clause 32.6 of this Schedule 2 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

31 NON-SOLICITATION

- 31.1 Except in respect of any transfer of staff pursuant to Schedule 10 (, neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Term or for a further period of twelve (12) Months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of the other Party.
- 31.2 If either the Contractor or the Authority commits any breach of Clause 31.1 of this Schedule 2 the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

32 CONFLICT OF INTEREST

- 32.1 The Contractor recognises that the Authority is subject to PPN 01/19: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing: (<https://www.gov.uk/government/publications/procurement-policy-note-0119-applying-exclusions-in-public-procurement-managing-conflicts-of-interest-and-whistleblowing>). The Contractor shall

comply with the provision of this Clause 34 in order to assist the Authority with its compliance with its obligations under that PPN.

- 32.2 The Contractor shall take appropriate steps to ensure that neither the Contractor nor the Contractor Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interest of the Contractor or the Contractor Personnel and the duties owed to the Authority and other Contracting Authorities under the provisions of the Contract.
- 32.3 The Contractor shall promptly notify and provide full particulars to the Authority or the relevant other Contracting Authority if such conflict arises or may reasonably be foreseen as arising.
- 32.4 Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 34.4.
- 32.5 The Authority reserves the right to terminate the Contract with immediate effect by giving written notice to the Contractor and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

33 EQUALITY AND DIVERSITY

- 33.1 The Contractor shall:
- 33.1.1 perform its obligations under the Contract (including those in relation to provision of the Services) in accordance with:
 - (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
 - 35.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 33.2 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in sex, age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, maternity, pregnancy, marriage, civil partnership or otherwise) in employment.

- 33.3 The Contractor shall take all reasonable steps (at its own expense) to secure the observance of Clause 33.1 of this Schedule 2 by all of its servants, employees or agents of the Contractor engaged in performance of the Contract and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Contractor by Clause 33.1 of this Schedule 2.
- 35.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Contractor, its agents, employees or Sub-contractors.
- 35.5 The Contractor shall (and shall use its reasonable endeavours to procure that the Contractor Personnel shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 35.6 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 35.7 Subject to Clause 019 (Liability) of this Schedule 2, the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Clause 35 (Equality and Diversity).

36 HEALTH AND SAFETY

- 36.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Contractor Personnel in the performance of the Services.
- 36.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 36.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises of the Authority and which may affect the Contractor in the performance of the Services.
- 36.4 The Contractor shall inform all Contractor Personnel engaged in the provision of Services at the Premises of the Authority of all known health and safety hazards and shall instruct those Contractor Personnel in connection with any necessary safety measures.
- 36.5 Whilst on the Premises of the Authority, the Contractor shall comply, and shall procure that the Contractor Personnel comply, with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 36.6 The Contractor shall notify the Authority Representative immediately in the event of any incident occurring in the performance of the Services on the Premises of the Authority where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 36.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

37 RELATIONSHIP OF THE PARTIES

- 37.1 Except as expressly provided otherwise in the Contract, nothing in the Contract, nor any actions taken by the Parties pursuant to the Contract shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

38 SERVICE OF NOTICES AND COMMUNICATIONS

- 38.1 Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 38.2 A notice shall be treated as having been received:
- 38.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 38.2.2 if sent by first class recorded delivery mail on a normal Working Day, at 9.00 am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00 am on the third Working Day subsequent to the day of posting; or
 - 38.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

39 FREEDOM OF INFORMATION ACT

- 39.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
- 39.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority, at the Contractor's expense, to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
 - 39.1.2 transfer to the Authority all requests for information that it receives under the FOIA and the Environmental Information Regulations ("**Requests for Information**") relating to the Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 39.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Contractor's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 39.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

- 39.2 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.
- 39.3 The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 12 (Right of Audit) of this Schedule 2 and shall permit the Authority to inspect such records as the Authority requests from time to time.
- 39.4 The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 14 (Right of Audit) of this Schedule 2.

40 TRANSPARENCY

- 40.1 The Contractor recognises that the Authority is subject to PPN 01/17: Update to Transparency Principles (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Contractor shall comply with the provision of this Clause 40 in order to assist the Authority with its compliance with its obligations under that PPN.
- 40.2 The Parties agree and acknowledge that the content of this Contract is not Confidential Information, except for:
- 40.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
- 40.2.2 Commercially Sensitive Information.
- 40.3 Notwithstanding any other provision of this Contract, the Contractor hereby gives consent for the Authority to publish to the general public this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 40.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

41 FORCE MAJEURE

- 41.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material

obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by giving written notice.

- 41.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 41.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 41.2 of this Schedule 2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

42 DISPUTE RESOLUTION

- 42.2 The Authority and the Contractor shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either notifying the other party of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.
- 42.3 Nothing in this dispute resolution procedure shall prevent the Authority or the Contractor from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 42.4 If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 42.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 47.5 of this Schedule 2 unless:
- 42.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
 - 42.3.2 the Contractor does not agree to mediation.
- 42.4 The obligations of the Authority and the Contractor under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.
- 42.5 The procedure for mediation is as follows:
- 42.5.1 a neutral adviser or mediator (the “**Contract Mediator**”) shall be chosen by agreement between the Authority and the Contractor or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
 - 42.5.2 the Authority and the Contractor shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If

considered appropriate, the Authority and the Contractor may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

- 42.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 42.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 42.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 42.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

43 SEVERABILITY

- 43.2 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

44 ENTIRE AGREEMENT

- 44.2 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

45 FURTHER ASSURANCES

- 45.2 Each Party undertakes at the request of the other, and at the cost of the requesting party, to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

46 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 46.2 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

47 LAW AND JURISDICTION

- 47.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 47.2 Subject to Clause 42 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

Schedule 3 - Definitions and Interpretation

1 Definitions

- 1.1 In the Contract unless the context requires otherwise the following definitions shall be used for the purposes of interpreting the Contract. Other definitions that are not of general application are stated in the Clause where the definition first appears and shall apply only to that Clause unless otherwise shown below:

“Anti-slavery Policy” means the Contractor’s slavery and human trafficking policy, if any;

"Authority" means the Secretary of State for Health acting as part of the Crown;

“Authority Data” means 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, and which are:

- (a) supplied to the Contractor by or on behalf of the Authority; or
- (b) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

any Personal Data for which the Authority is the Controller;

"Authority Representative" means the person authorised to act for the Authority for the purposes of the Contract, being the person specified in the Key Provisions;

‘Biometric Data’ means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;

"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:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change Control Process” means the change control process, if any, referred to in the Key Provisions;

"Commencement Date" means the date of this Contract;

"Commercially Sensitive Information" means the information listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which:

1. was public knowledge at the time of disclosure (otherwise than by breach of Clause 15 (Confidential Information));
2. was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
4. is independently developed without access to the Confidential Information;

"Contract" means the form of contract at the front of this document and all schedules attached to the form of contract;

"Contract Price" means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in Schedule 6 (Pricing) for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Clause 0 (Price Adjustment on Extension of Term);

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Regulations;

"Contractor" means the contractor named on the form of Contract on the second page

"Contractor Personnel" means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor engaged in the performance of the Contractor's obligations under the Contract from time to time;

"Contractor Representative" means the individual authorised to act for the Contractor for the purposes of the Contract, being the person specified in the Key Provisions;

"Contracts Finder" means the facility provided by the Cabinet Office to advertise contract opportunities available at <https://www.gov.uk/contracts-finder> and any successor facility or website;

"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer" take the meaning given in the GDPR

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Data concerning health” means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means (i) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; (ii) Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement:

- (a) in the case of the Authority, of its employees, servants or agents; or
- (b) in the case of the Contractor, of its Sub-contractors or any Contractor Personnel,

in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

“DOTAS” if applicable means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs 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 by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“Exit Day” shall have the meaning in the European Union (Withdrawal) Act 2018;

“Exit Plan” means the plan for the provisions of the Transitional Assistance Services in the event of the expiry or termination of the Contract, which is to be developed by the Parties pursuant to Clause 15 of Schedule 1;

“Expiry Date” means the date upon which the Contract shall end as specified in the Key Provisions;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time 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” any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractor’s supply chain or, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

“GDPR” means the General Data Protection Regulations (Regulation (EU) 2016/679);

“General Anti-Abuse Rule” if applicable, means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances;

“Halifax Abuse Principle” if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;

“Impact Assessment” has the meaning given to it in Clause 10.4 of Schedule 1;

“Implementation Plan” means the implementation plan, if any, referred to in the Key Provisions;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Intellectual Property Rights” includes but is not limited to patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, rights in software programmes, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Joint Controllers” means where two or more Controllers jointly determine the purposes and means of processing;

“Key Personnel” means those persons named in the Schedule 11 as being key personnel or such persons as shall be agreed in writing by the Authority from time to time;

“Law” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply including but not limited to the Modern Slavery Act 2015;

“Month” means calendar month;

“Occasion of Tax Non-Compliance” if applicable, means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor 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; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 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 Commencement Date or to a civil penalty for fraud or evasion;

“Party” means a party to the Contract;

“Person” where the context allows, includes a corporation or an unincorporated association;

“Processor Personal” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

“Protective Measures” means appropriate technical and organisational measures 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;

“Premises” means, where applicable, the location where the Services are to be supplied, as set out in the Schedule 4 (Specification);

“Processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, 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;

“Profiling” means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working or engaged by a Contracting Authority and/or the Authority a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity; or

(b) committing any offence:

- (i) under the Bribery Act 2010; or
- (ii) under legislation creating offences concerning Fraud; or
- (iii) at common level concerning Fraud; or
- (iv) committing (or attempting or conspiring to commit) Fraud;

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract;

“pseudonymising” means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 4 (Specification) and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;

“Regulations” means the Public Contracts Regulations 2015 as amended from time to time;

“Regulatory Bodies” means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract and **“Regulatory Body”** shall be construed accordingly;

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” if applicable, means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

“Relevant Transfer” shall have the meaning ascribed in Schedule 10 (Staff Transfer);

“Replacement Contractor” means any third party contractor of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;

“Replacement Services” means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are provided by the Authority itself or by any Replacement Contractor;

“Security Policy” means the HMG Security Policy Framework (April 2014) available at <https://www.gov.uk/government/publications/security-policy-framework>, as amended by notification to the Contractor from time to time;

“Services” means the services to be supplied as specified in Schedule 4 (Specification);

“Services Commencement Date” means the services commencement date, if any, referred to in the Key Provisions;

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises (http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en) defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Step In Rights” means the step in rights, if any, referred to in the Key Provisions;

“Sub-contract” means the Contractor’s contract with a Sub-contractor whereby that Sub-contractor agrees to provide to the Contractor the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services;

“Sub-contractor” means any person appointed by the Contractor to carry out any and/or all of the Contractor’s obligations under the Contract;

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;

“Tender” means the tender submitted by the Contractor to the Authority and annexed to Schedule 5 (Tender);

“Term” means the term as set out in the Key Provisions;

“Termination Notice” means any notice to terminate this Contract which is given by either Party in accordance with the provisions of the Contract;

“Termination Period” means the period specified in the Termination Notice during which period the Authority may require the Contractor to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Term (as extended by Clause 2 (Extension) of Schedule 2 by more than [six (6)] Months;

“Transferring Former Contractor Employees” shall have the meaning ascribed in Schedule 10 (Staff Transfer);

“Transferring Authority Employees” shall have the meaning ascribed in Schedule 10 (Staff Transfer);

“Transitional Assistance Service Charges” means the charges, if any, payable by the Authority to the Contractor for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 6;

“Transitional Assistance Services” means the services to be provided by the Contractor to the Authority pursuant to Clause 15 of Schedule 1 in order to facilitate the transfer of the Services to the Authority or a Replacement Contractor;

“Variation” has the meaning given to it in Clause 10.2 of Schedule 1;

“Variation Form” means the form set out in Schedule 9 (Variation Form);

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

“Voluntary, Community and Social Enterprise” or “VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

“Worker” means any one of the Contractor Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies in respect of the Services;

“Working Day” means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

1.2.1 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as

- amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 Where there is any conflict between the Tender (being set out at Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.4 In entering into this Contract the Authority is acting as part of the Crown.
- 1.5 Any reference in this Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;

Schedule 4 - Specification

Eggplant are providing the following:

Managed Load Test - a managed service which bundles Eggplant Performance Licences plus a maximum of 47 person working days and 10 person weekend working days – Term is valid 16th May 2020 to 31st July 2020.

The managed Load Test service is renewable at the end of the term and additional Managed Load Tests can be purchased in the event that further capacity is required before the end of the term.

An MLT is a package of the following pieces of work:

- Scoping
 - Helping customer to establish the levels of load that need to be generated in order to achieve their goals, and what scripts and journey paths are critical to both the business and the system under test
- Planning
 - Creating the Load Test Plan (including documented goals and detail on how they will be achieved)
 - Testing Scenario Design
- Script Creation
 - Working with the customer to ensure that the scripts are an accurate reflection of real world system behaviour
 - Where necessary also engaging with third parties as directed by the customer to ensure that all relevant parts of the application can be tested
- Script Verification
 - Do the scripts create the correct patterns of load under single user / low volumes
 - Do these tests populate the database with the right data
- Test Execution
 - Working with the customer during testing to ensure that they have visibility of the tests whilst they are running to allow the correct correlations to be made.
 - Test execution can be on-site or remote, in hours or out of hours.
- Results Analysis and Reporting
 - When the final tests have been completed a summary report of the most relevant testing activity is created.

The packages of work flex in terms of the scale of VUs required and the amount of test executions required (as determined at the scoping stage).

Schedule 5 - Tender

N/A

Schedule 6 - Pricing

Call-Off Contract value:	£143,000 ex.VAT + £35,000 contingency
Charging method:	Monthly in arrears

Eggplant are providing the following:

Eggplant are providing the following:

Managed Load Test - a managed service which bundles Eggplant Performance licences with 57 test windows to be used at any time with unlimited performance testing expertise – Term is valid 16th May 2020 to 31st July 2020 – [REDACTED]

Inclusive of:

Unlimited Eggplant Performance VUs for 11 weeks - [REDACTED]

57 test windows including results analysis @ [REDACTED]

Step creation [REDACTED]

Managed Load Test Services will be invoiced monthly in arrears as follows:

- May 31st - [REDACTED]
(2 weeks of Unlimited VUs, 16 test windows and the initial step creation)
- June 30th [REDACTED]
(4 weeks of Unlimited VUs and 24 test windows)
- July 31st [REDACTED]
(5 weeks of Unlimited VUs and 17 test windows)

AWS Costs incurred (time and materials basis) [REDACTED]

AWS Costs will be invoiced monthly in arrears based on costs incurred. These are estimated to be:

- May 16th – June 5th [REDACTED]
- June 6th – July 31st [REDACTED]

Eggplant will provide an AWS usage report monthly which will be in USD and we will use an FX rate of 1.25 to convert to GBP. (Rates will be reviewed at three (3) month point)

[REDACTED]

Schedule 7 - Contract monitoring

N/A

Schedule 8 - Commercially sensitive information

N/A

Schedule 9 - Variation Form

N/A

Schedule 10 - Staff Transfer

N/A

Schedule 11 - Key Personnel

Key Role	Name of Key Personnel	Responsibilities / Authorities	Minimum period in Key Role

Schedule 12 - Exit Arrangements

1 PURPOSE OF SCHEDULE

- 1.1 The Contractor is required to ensure the orderly exit of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination (including partial termination) or expiry of this Contract.

2 EXIT

- 2.1 At the point of Exit from the service provision to the Authority, the Supplier shall produce a report as defined in Clause 3 (Obligations During the Term) and which identifies and provides any critical issue for carrying out the Services to the Authority.

3 OBLIGATIONS DURING THE TERM

The Contractor shall adhere to Authority Exit arrangements, including, the provision of a documented report of the work performed with the results that they have recorded, together with a summary of the performance that they have seen on each of the main app server interfaces.

- 3.1 On reasonable notice, the Contractor shall provide to the Authority and/or to its Replacement Contractor (subject to the Replacement Contractor entering into reasonable written confidentiality undertakings with the Contractor), such material and information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence.

Schedule 13 - Processing, Personal Data and Data Subjects (GDPR)

The Supplier is not expected to access any Personal Data in delivering the Service.

Should the Supplier access the Authority Personal Data in the delivery of the Testing, a data processor is in place to ensure that appropriate legal safeguards are in place.

- 1.1 Buyer's instructions to Supplier with respect to Processing Personal Data are contained in 'this Annex. The contact details of the Buyer's Data Protection Officer are: data_protection@dhsc.gov.uk
- 1.2 The contact details of the Supplier's Data Protection Officer are: Jonathan Gillaspie; jonathan.gillaspie@eggplantsoftware.com
- 1.3 The Supplier shall comply with any further written instructions with respect to Processing by the Buyer.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	The Buyer is Controller and the Supplier is Processor The Parties acknowledge that for the purposes of this contract and of the Data Protection Legislation the Authority is the Data Controller and the Supplier is the Processor. All Personal Data accessed in a successful Performance Test in the delivery of the contract.
Duration of the Processing	Until <i>the contract end date which is currently set at 21/11/2020</i>
Nature and purposes of the Processing	The Supplier is not expected to access any Personal Data during the course of the contract. The Supplier is a data Processor and will ensure that appropriate legal safeguards are in place. 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.
Type of Personal Data	Examples here currently include: first three digits of postcode, app user ID and any associated symptom information and messaging service ID.
Categories of Data Subject	Data Subjects are users of the NHS COVID-19 App. The Parties acknowledge that the NHS COVID-19 App is not intended or designed for use by children and that no instructions have been received by the Supplier in respect of the same.