



Department
of Health &
Social Care

www.gov.uk

Surgical Materials Testing Laboratory

Attn: [REDACTED]
By email to: [REDACTED]

Date: 22/02/2022

Dear [REDACTED]

Supply of product testing and consultancy services

Following our recent discussions regarding the supply of PPE product testing and consultancy services as part of the Pilot Testing Programme for Expiry Extension, we are now able to present the contract conditions for your review and signature.

The attached contract details ("**Order Form**"), contract conditions and the Annexes set out the terms of the contract between the Department of Health and Social Care and Surgical Materials Testing Laboratory for the provision of the services set out in the Order Form.

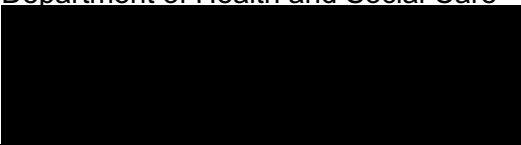
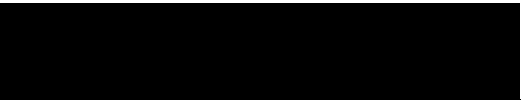
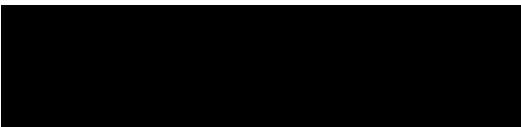
We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the services. Please confirm your acceptance of the Conditions by signing and returning the Order Form to at the email address of DHSC's representative provided below within 7 days from the date of this Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number below in any future communications relating to this contract.

We will then arrange for Order Form to be countersigned which will create a binding contract between us.


Yours sincerely,

[REDACTED]

Order Form

1. Contract Reference	C70181
2. Date	08/03/2022
3. Buyer	Department of Health and Social Care 
4. Supplier	Surgical Materials Testing Laboratory 
5. The Contract	<p>The Supplier shall supply the services described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>
6. Services	<p>The Supplier shall supply the Services, as defined in the Contract.</p> <p>The Services are to be performed at the Supplier's premises: </p> <p>or at approved third party laboratories.</p>
7. Specification	The specification of the Services as set out in Annex 1 and as further set out in an Instruction.
8. Term	<p>The Term shall commence on 1 November 2021</p> <p>and the Expiry Date shall be 30 June 2022, unless it is terminated or extended in accordance with the terms and conditions of the Contract.</p> <p>The Buyer may extend the Term of the Contract by up to two (2) months by giving no less than thirty (30) days' prior written notice to the Supplier.</p>

9. Charges	<p>The Charges for the Services shall be calculated in accordance with Annex 2 and agreed between the Parties in advance in writing, and shall not in any event exceed £70,000 for the duration of the Term.</p> <p>The Buyer shall not be required to procure any minimum volume or value of Services from the Supplier under the Contract.</p>		
10. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>Department of Health and Social Care [REDACTED]</p> <p>Or via email to [REDACTED]</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [REDACTED]</p>		
11. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>[REDACTED]</p> <p>Email: [REDACTED]</p> <p>Tel: [REDACTED]</p>		
12. Address notices for	<table border="0"> <tr> <td style="vertical-align: top;"> Buyer: [REDACTED] Attention: [REDACTED] Email: [REDACTED] </td><td style="vertical-align: top;"> Supplier: Surgical Materials Testing Laboratory [REDACTED] Attention: [REDACTED] Email: [REDACTED] </td></tr> </table>	Buyer: [REDACTED] Attention: [REDACTED] Email: [REDACTED]	Supplier: Surgical Materials Testing Laboratory [REDACTED] Attention: [REDACTED] Email: [REDACTED]
Buyer: [REDACTED] Attention: [REDACTED] Email: [REDACTED]	Supplier: Surgical Materials Testing Laboratory [REDACTED] Attention: [REDACTED] Email: [REDACTED]		

13. Key Personnel	<p>Supplier: Surgical Materials Testing Laboratory</p> 
14. Procedures and Policies	<p>For the purposes of the Contract the Staff Vetting Procedures, data security requirements, equality and diversity policy and environmental policy, provided by the Buyer from time to time, shall apply.</p> <p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Services has undertaken a Disclosure and Barring Service check.</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.</p>

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name:  Director, SMTL	Name:  Director, PPE Policy and Strategy
Date: 7/3/2022	Date: 07/03/2022
Signature: 	Signature: 

Annex 1 – Specification

Testing Services

The Supplier is to provide testing of certain personal protective equipment (PPE) for the Buyer as part of the Pilot Testing Programme for Expiry Extension. The testing includes, but is not necessarily limited to: material characterisation testing (including tensile strength), visual inspection and usability assessment.

The Supplier shall provide as part of the Testing Services reports detailing the results of any such testing, and such Deliverables will be reviewed and relied on to make strategic decisions regarding the use of PPE within the NHS supply chain.

“Testing Services” also includes the sub-contracting of testing to appropriate third party laboratories. The Supplier will gain prior approval of any such sub-contracting with the Buyer.

Consultancy Services

The Supplier is to provide advice and support to the Buyer as part of the Pilot Testing Programme for Expiry Extension, including, but not limited to:

- supporting the tender process to procure other testing partners by providing advice on the technical aspects of the tender and assisting with the evaluation of the tender;
- liaising with other testing partners to monitor whether their testing programmes are running to plan and reporting the progress to the Buyer;
- supporting arranging the logistics and transportation of aged products and any other ad hoc logistics or transportation as required;
- conducting analysis of the testing results provided by other testing partners;
- providing final analysis and assessment of product status and liaise with the Buyer on final recommendations as part of the Pilot Testing Programme;
- supporting with interpreting the results and recommendations; and
- providing other ad hoc advice relating to the Pilot Testing Programme as the Buyer may require.

Annex 2 – Charges

Rate Card

Consultancy Services:

• Consultancy project setup	per project	£3,360
• Partner test house setup	per sample	£80
• Sample management	per sample	£120
• Report analysis	per report	£144
• Report writing	per report	£176
• Report QA	per report	£160
• Other discussion or support	per hour	£160

Testing Services:

• Testing project setup	per project	£960
• Sample testing, visual inspection and usability	per sample	£280
• Lint testing of masks per sample	per sample	£240
• Test reporting	per sample	£80
• Test report analysis	per sample	£111
• Sub-contracted testing (incl. commissioning of biocompatibility assessment)	charged as incurred	

Note: all prices are ex-VAT; if incurred, courier charges will be charged separately as incurred (incl. the subcontracting to courier aged samples).

Short form Terms

1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Buyer"	means the person identified in the letterhead of the Order Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Capacity"	as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity;
"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: <ul style="list-style-type: none">(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 in Law"	means any change in Law which impacts on the supply of the Services (including taxation or duties of any sort affecting the Supplier) which comes into force after the start date of the Contract set out in the Order Form;
"Charges"	means the charges for the Services as specified in the Order Form and Annex 2;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
"Controller"	has the meaning given to it in the GDPR;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers,

	government departments, government and particular bodies and government agencies;
“Crown Body”	means any department, office or executive agency of the Crown;
“Consultancy Services”	means the consultancy services supplied by the Supplier to the Buyer under the Contract, as set out in the Specification;
"Data Protection Legislation"	means: <ul style="list-style-type: none">(a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;(b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and(c) all applicable Law about the processing of personal data and privacy;
“Deliverables”	means any report or advice, whether in physical or electronic format, that the Supplier provides to the Buyer as a result of the performance of the Services;
"Existing IPR"	means any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
"Exit Day"	has the meaning in the European Union (Withdrawal) Act 2018;
"Expiry Date"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; iii) any failure of delay caused by a lack of funds; iv) any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union; and v) any event or other consequence arising as a result of or in connection with the COVID-19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Services cannot be provided as set out in the Contract (in all material respects) without such

	Laws and/or government guidance being breached, or if the Supplier can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Services due to the levels of COVID-19 infections in the population of the United Kingdom.
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	<ul style="list-style-type: none">(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or(b) any Personal Data for which the Buyer is the data controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner"	means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	means in respect of a person: <ul style="list-style-type: none">i) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
"Instruction"	has the meaning given to it in clause 4.2(a)(i);
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
"Law"	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with

	which the Supplier is bound to comply;
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680);
"New IPR"	means all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
"Order Form"	means the letter from the Buyer to the Supplier printed above these terms and conditions;
"Party"	means the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the GDPR;
"PPE Product"	means a sample of personal protective equipment being testing by the Supplier as part of the Testing Services;
"Processing"	has the meaning given to it in the GDPR;
"Purchase Order Number"	means the Buyer's unique number relating to the order for Services to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Response"	has the meaning given to it in clause 4.2(a)(ii);
"Services"	means the services to be supplied by the Supplier to the Buyer under the Contract, comprising the Testing Services and Consultancy Services;
"Specification"	means the specification for the Services to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Supplier Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under

	a Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Term"	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be terminated in accordance with the terms and conditions of the Contract;
"Testing Services"	means the product testing services supplied by the Supplier to the Buyer under the Contract, as set out in the Specification;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	means any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Services;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London; and
"Working Hour"	means one hour between 9am and 5pm on a Working Day.

2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law;
- 2.7 the words "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation"; and
- 2.8 any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (a) 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 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
 - (b) 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.

3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to procure the Services subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier and shall provide the Services upon receipt of an Instruction from the Buyer, in accordance with the terms of this Contract.
- 3.3 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Services are and remain true and accurate.

4. What needs to be delivered

4.1 The Services

- (a) The Supplier, subject to the terms and conditions of this Contract, shall provide the Services (and any resulting Deliverables) in accordance with the terms of this Contract and shall:
 - (i) co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and Deliverables;
 - (ii) observe all lawful instructions given by the Buyer from time to time which are consistent with the Supplier's obligations under this Contract;
 - (iii) not do or omit to do, and will ensure that its Supplier Staff will not do or omit to do, anything in the performance of the Services or its obligations under this Contract that will cause the Buyer to be in breach of any applicable Laws or any other orders, guidelines, or other recommendations made by any regulatory body or competent authority from time to time or would otherwise have a negative impact on the reputation of the Buyer;
 - (iv) allocate sufficient resources and appropriate expertise to the Contract;
 - (v) take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors;
 - (vi) ensure all Services, and anything used to deliver the Services, are of good quality and free from defects;
 - (vii) take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors
 - (viii) ensure that the Services are carried out, and the Deliverables are delivered:
 - (A) in accordance with the Specification and any requirements set out in the Instruction;
 - (B) to a professional standard;
 - (C) using reasonable skill and care;
 - (D) using Good Industry Practice;
 - (E) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
 - (F) by the dates agreed between the Parties in writing; and
 - (G) such that the Services and Deliverables comply with all law.
- (b) Time is of the essence in relation to the delivery of the Services and Deliverables.
- (c) The Supplier must at its own risk and expense provide all equipment required to carry out the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (d) To the extent that the Buyer supplies any physical property to the Supplier within the context of the Services, the Supplier shall make good any damage that it has caused to such property, other than fair wear and tear. For the avoidance of doubt, this clause (d) shall not apply to PPE Products used by the Supplier in connection with the Services.
- (e) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

4.2 Instruction Process

- (a) The Parties shall follow the following process when requesting an instruction for Services:

- (i) from time to time the Buyer may send an instruction to the Supplier for the provision of Services, setting out the details of the Services and Deliverables required in adequate detail, along with any deadline for the provision of such Services and/or Deliverables ("**Instruction**");
 - (ii) the Supplier shall acknowledge the Buyer's request within 4 Working Hours and shall as soon as reasonably possible provide a response detailing how it will deliver the Services and/or Deliverables, including an estimate of Charges and a delivery date which shall be no later than the deadline specified in 4.2(a)(i) ("**Response**");
 - (iii) the Buyer shall accept or reject the Response as soon as reasonable practicable. In the event that the Buyer rejects the Response, it shall provide detailed reasons for such rejection and the Supplier shall promptly re-submit the Response accordingly;
 - (iv) where the Response has been accepted by the Buyer, the Supplier shall provide the Services and deliver any Deliverables in accordance with the any specified requirements in the Instruction and any delivery date agreed in the Response. Where no delivery date has been agreed, the Services and/or Deliverables shall be provided promptly.
- (b) Where the Supplier is required to carry out Testing Services:
 - (i) the Buyer shall arrange for the relevant PPE Product to be sent to the Supplier without undue delay;
 - (ii) after the Supplier has completed the Testing Services, unless otherwise requested by the Buyer, it must dispose of the PPE Product in accordance with Good Industry Practice and applicable Laws, although where agreed by the Buyer in writing the Supplier may retain a sample of the PPE Product for its records; and
 - (iii) the Supplier may only use any PPE Products solely for the purpose of delivery of the Services.

4.3 Other activities

- (a) Nothing in this agreement shall prevent the Supplier or the Supplier Staff from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Term provided that such activity does not cause a breach of any of the Supplier's obligations under this Contract.

5. Pricing and payments

- 5.1 In exchange for the Services, the Supplier shall be entitled to invoice the Buyer for the Charges in the Order Form. The Supplier shall raise consolidated invoices promptly following completion of Services at such frequency as the Buyer may direct from time to time.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
 - (b) unless otherwise agreed in writing, include all costs connected with the supply of the Services and Deliverables.
- 5.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
 - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer; and
 - (b) includes a detailed breakdown of the Services and Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Services or Deliverables. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 32.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

6. The Buyer's obligations to the Supplier

- 6.1 If the Supplier fails to comply with the Contract as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Supplier is entitled to additional time needed to carry out the Services and deliver the Deliverables;
 - (c) the Supplier cannot suspend the ongoing supply of Services or Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) mitigated the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Services and/or Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action; and
 - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provides to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

8. Supplier staff

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified and the Supplier shall ensure that all Deliverables are completed or supervised by either the Supplier Key Personnel or another member of suitably qualified Supplier Staff at director level; and
 - (b) be vetted using Good Industry Practice and in accordance with any reasonable instructions issued by the Buyer from time to time.
- 8.2 Where a Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

- 8.5 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Services and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

9. Rights and protection

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
 - (b) the Contract is executed by its authorised representative;
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
 - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
 - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
 - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Services under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier, any of its subcontractors and/or Supplier Staff that impacts the Contract; and
 - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Services and Deliverables must be assigned for the Buyer's benefit by the Supplier.

10. Intellectual Property Rights (IPRs)

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:
- (a) receive and use the Deliverables; and
 - (b) use the New IPR.
- 10.2 Any New IPR created under the Contract, including IPR in the Deliverables, is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPR.
- 10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services and/or Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- (a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights; or
- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the quality of the Deliverables.

11. Ending the contract

11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

11.2 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 30 days' written notice and if termination takes place in accordance with this clause 11.2, clauses 11.4(b) to 11.4(g) shall apply.

11.3 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
 - (i) there's a Supplier Insolvency Event;
 - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which is not pre-approved by the Buyer in writing;
 - (v) if the Buyer discovers that the Supplier was in one of the situations in regulation 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations or where the Buyer acting reasonably determines that such a finding would be likely; or where any other competent court finds or in the reasonable opinion of the Buyer is likely to find that the Contract award was unlawful; or
 - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in regulations 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.4(b) to 11.4(g) applies.

11.4 What happens if the Contract ends

Where the Buyer terminates the Contract under clause 11.3(a) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement services and deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return (or at the Buyer's option dispose of) any of the Buyer's property provided under the Contract which is in its control or possession on the termination date, including (save where otherwise agreed) any PPE Products;

- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement; and
- (g) the following clauses survive the termination of the Contract: 3.2 (How the Contract works), 10 (Intellectual Property Rights), 6 (The Buyer's obligations to the Supplier), 7.2 (Record keeping and reporting), 9 (Rights and protection), 11 (Ending the Contract), 14 (Data Protection), 15 (What you must keep confidential), 16 (When you can share information), 17 (Invalid parts of the Contract), 18 (No other terms apply), 32 (Resolving disputes) and 33 (Which law applies) and any clauses which are expressly or by implication intended to continue.

11.5 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Services itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.5, but the Supplier may not either:
 - (i) reject the variation; or
 - (ii) increase the Charges, except where the right to partial termination is under clause 11.2.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.5.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier for the Term.
- 12.2 No Party is liable to the other for:
 - (a) any indirect losses; or
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
 - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.4 (Supplier Staff), 9.3 (Rights and protection), 10.5 (Intellectual Property Rights), 13.2 (Obeying the law) or 29.2 (Tax).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.
- 12.7 The Supplier shall obtain and maintain throughout the duration of the Term adequate insurances, which shall include professional indemnity insurance, with an insurer of repute so as to cover its potential liability to the Buyer under this Contract.

13. Obeying the law

- 13.1 The Supplier must, in connection with provision of the Services and Deliverables, use reasonable endeavours to:
 - (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf and such other

- corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
 - (b) support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
 - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment; and
 - (d) meet the applicable Government Buying Standards applicable to the Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract.
- 13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, clause 13.1 (Obeying the Law) and clauses 26 (Preventing fraud, bribery and corruption) to 31 (Reporting a Breach of Contract).
- 13.4 **"Compliance Officer"** shall mean the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations.

14. Data protection

- 14.1 The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate):
- (a) administer and provide the Services;
 - (b) request and receive the Services;
 - (c) compile, dispatch and manage the payment of invoices relating to the Services;
 - (d) manage the Contract and resolve any disputes relating to it;
 - (e) respond and/or raise general queries relating to the Services; and
 - (f) comply with their respective regulatory obligations.
- 14.2 Processing of Personal Data relating to each Party's representatives for the purposes set out in Clause 14 shall only be done by each Party in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, at all times within the EEA in order to carry out the activities listed in Clause 14.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.

15. What you must keep confidential

- 15.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
 - (c) if the information was given to it by a third party without obligation of confidentiality;
 - (d) if the information was in the public domain at the time of the disclosure;
 - (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
 - (f) to its auditors or for the purposes of regulatory requirements;
 - (g) on a confidential basis, to its professional advisers on a need-to-know basis;

- (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by parliament;
 - (e) under clauses 5.7 and 16.
- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
 - (a) comply with any Freedom of Information Act (FOIA) request; and
 - (b) comply with any Environmental Information Regulations (EIR) request.
- 16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

17. Invalid parts of the contract

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

18. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

19. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

20. Circumstances beyond your control

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
 - (a) provides written notice to the other Party; and

- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either party can partially or fully terminate the Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under clause 20.2:
 - (a) each party must cover its own losses;
 - (b) clause 11.4(b) to 11.4(g) applies.
- 21. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.
- 22. Giving up contract rights**

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.
- 23. Transferring responsibilities**
 - 23.1 The Supplier cannot assign, novate, subcontract or transfer the Contract or any part of it without the Buyer's written consent.
 - 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
 - 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
 - 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
 - 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
 - 23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
 - (a) their name;
 - (b) the scope of their appointment; and
 - (c) the duration of their appointment.
- 24. Changing the contract**
 - 24.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.
 - 24.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor be entitled to an increase in the Charges as a result of a Change in Law.
- 25. How to communicate about the contract**
 - 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
 - 25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
 - 25.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.
- 26. Preventing fraud, bribery and corruption**
 - 26.1 The Supplier shall not:
 - (a) commit any criminal offence referred to in regulations 57(1) and 57(2) of the Regulations; or

- (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
 - (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
 - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.
- 27. Equality, diversity and human rights**
- 27.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
 - (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 27.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.
- 28. Health and safety**
- 28.1 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding health and safety;
- 28.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.
- 29. Tax**
- 29.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 29.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:
 - (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and

- (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Services by the Supplier or any of the Supplier Staff.
- 29.3 If any of the Supplier Staff are Workers who receive payment relating to the Services, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Buyer may, at any time during the Term, request that the Worker provides information which demonstrates they comply with clause 29.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
 - (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not good enough to demonstrate how it complies with clause 29.2 or confirms that the Worker is not complying with those requirements; and
 - (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

30. Conflict of interest

- 30.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 30.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 30.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

31. Reporting a breach of the contract

- 31.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1 (Obeying the Law), or clauses 26 (Preventing fraud, bribery and corruption) to 30 (Reporting a breach of the contract).
- 31.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 31.1.

32. Resolving disputes

- 32.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 32.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 32.3 to 32.5.
- 32.3 Unless the Buyer refers the dispute to arbitration using clause 32.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
 - (b) grant interim remedies;
 - (c) grant any other provisional or protective relief.
- 32.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

- 32.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 32.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 32.4.
- 32.6 The Supplier cannot suspend the performance of the Contract during any dispute.
- 33. Which law applies**
This Contract and any issues arising out of, or connected to it, are governed by English law.