

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS
Appendix A – Terms of Participation

Schedule 13 - Processing, Personal Data and Data Subjects

1. The Parties acknowledge and agree that:
 - a. they are Independent Controllers for the purposes of the Data Protection Legislation in relation to Personal Data that may be shared under this Contract;
 - b. neither Party will act as a Processor on behalf of the other Party for the purposes of the Data Protection Legislation in relation to this Contract; and
 - c. the Parties will not act as Joint Controllers for the purposes of the Data Protection Legislation in relation to this Contract.
2. The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:
 - a. business contact details of Contractor Personnel;
 - b. business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Contractor Personnel) engaged in the performance of the Authority's duties under this Contract; and
 - c. business contact details of any directors, officers, employees, agents, consultants and contractors of any Customers (as defined in Clause 1 of Schedule 4) in relation to the performance of the Contractor's duties under this Contract relating to those Customers,that may be shared between the Parties in relation this Contract from time to time.

Conditions of Contract for the Provision of Services

Contents

CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES	1
SCHEDULE 1 - KEY PROVISIONS	5
SCHEDULE 2 - GENERAL TERMS AND CONDITIONS.....	16
SCHEDULE 3 - DEFINITIONS AND INTERPRETATION	74
SCHEDULE 4 - SPECIFICATION	87
ANNEX 1 TO SCHEDULE 4.....	94
ANNEX 2 TO SCHEDULE 4.....	95
SCHEDULE 5 – NOT USED	96
SCHEDULE 6 - PRICING.....	97
ANNEX 1 TO SCHEDULE 6.....	101
ANNEX 2 TO SCHEDULE 6.....	102
SCHEDULE 7 - CONTRACT MONITORING	103
SCHEDULE 8 - COMMERCIAL SENSITIVE INFORMATION.....	106
SCHEDULE 9 - VARIATION FORM.....	107
SCHEDULE 10 - STAFF TRANSFER.....	109
ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS.....	130
SCHEDULE 11 - KEY PERSONNEL.....	131
SCHEDULE 12 - NOT USED	132
SCHEDULE 13 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS	133

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

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	Fresenius Kabi Limited which is a company registered in England and Wales under company number 2182135 and whose registered office is at Cestrian Court, Eastgate Way, Manor Park, Runcorn, Cheshire, UK, WA7 1NT
Date	26 November 2020

1. Background

- 1.1. It is recognised that the treatment of COVID-19 patients in critical care presents a new pathway with specific requirements for enteral nutrition products over and above business as usual levels of demand previously experienced and is usually required only during a hospital stay rather than on a long term basis after discharge. This new pathway is distinct from the normal usage patterns of these products and therefore a new commercial arrangement is required to enable the COVID-19 specific demand for these products to be met.
- 1.2. For COVID-19 patients requiring mechanical ventilation or non-invasive ventilation and other forms of oxygen therapy, clinical guidance suggests that the specific composition of enteral feed can make a material difference to patient outcomes and therefore the Authority is seeking to take steps to minimise the risk of a supply shortage of these specific products.
- 1.3. The Authority is seeking to establish arrangements that enable reserve quantities of these specific products to be manufactured, stored and distributed to NHS bodies when required for the treatment of COVID-19 patients in an acute setting.
- 1.4. The Contractor has agreed to establish and maintain a reserve of these specific products that will be supplied to NHS bodies for the treatment of COVID-19 patients in an acute setting to mitigate the risk of a supply shortage as a result of the COVID-19 pandemic.

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services


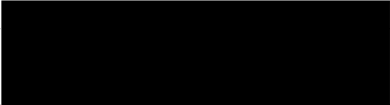
2. The Contract

- 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.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Not Used
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	Not Used
Schedule 13	Processing, Personal Data and Data Subjects



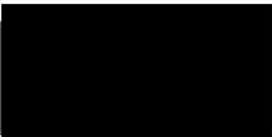


Signed by the authorised representative of THE AUTHORITY

Name:		Signature	
Position:	Deputy Director, Procurement		

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

Signed by the authorised representative of THE CONTRACTOR

Name:		Signature	
Position:	Business Unit Manager – Clinical Nutrition		
Name:		Signature	
Position:	Finance and Administration Director – UK and Ireland		
Name:		Signature	
Position:	Managing Director – UK and Ireland		

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 Services Commencement Date and the Term of this Contract shall expire on **30 June 2021** ("the **Expiry Date**"). The Term may be extended in accordance with Clause 2 (Extension) of Schedule 2 provided that this Contract shall not continue beyond **30 June 2022**.

3 Authority Representative and Contractor Representative

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

- 3.1.1 for the Authority:

The Authority will notify the Contractor of the identity of the Authority Representative following the Commencement Date. Until such notification the Contractor can contact the Authority Representative by email at [REDACTED] headed "For the Attention of the Enteral Contract Manager".

- 3.1.2 for the Contractor:

[REDACTED] **Business Unit Manager – Clinical Nutrition**

4 Names and addresses for notices

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

4.1.1 for the Authority:

For the Attention of the Enteral Contract Manager

Department of Health and Social Care

39 Victoria St

Westminster

London

SW1H 0EU

[REDACTED]

4.1.2 for the Contractor:

For the Attention of the Contracts Manager and Business Unit Manager

Cestrian Court

Eastgate Way Manor Park

Runcorn

Cheshire

WA7 1NT

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 not used;

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

6.1 The Parties agree that:

6.1.1 not used;

6.1.2 the commencement of the provision of the Services or a part of the Services will not result in a Relevant Transfer and Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 shall not apply; and

6.1.3 Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services.

Optional Key Provisions

7 **Implementation phase** ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

7.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 1.3 of Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule **[insert schedule number]**.

8 **Services Commencement Date (where the Services are to start at a date after the Commencement Date)** ☒ (only applicable to the Contract if this box is checked and the date is inserted in Clause 8.1 of this Schedule 1)

8.1 The Services Commencement Date shall be **1 October 2020**.

9 **Different levels and/or types of insurance** ☐ (only applicable to the Contract if this box is checked and the table sets out the requirements)

- 9.1 The Contractor shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
[Employer's Liability]	£
[Public Liability]	[]
[Professional Indemnity]	[]
Cyber Liability Insurance	
[Insert other types of insurance as appropriate]	[]

- 10 **Inclusion of a Change Control Process** ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

- 10.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in this Clause 10.

- 10.2 Subject to the provisions of this Clause 10 and Clause 5 (Price Adjustment on Extension of Term) of Schedule 2, either Party may request a variation to the Contract provided that such variation does not amount to a substantial modification of the Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

- 10.3 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.

- 10.4 Where the Authority has so specified on receipt of a Variation Form from the Contractor, the Contractor shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:

10.4.1 details of the impact of the proposed Variation on the Services and the Contractor's ability to meet its other obligations under the Contract;

10.4.2 details of the cost of implementing the proposed Variation;

- 10.4.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 10.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 10.4.5 such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 10.5 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 10.6 Subject to Clause 10.4 of this Schedule 1, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 10.7 In the event that:
- 10.7.1 the Contractor is unable to agree to or provide the Variation; and/or
 - 10.7.2 the Parties are unable to agree a change to the Contract Price may be included in a request of a Variation or response to it as a consequence thereof,
- the Authority may:
- (A) agree to continue to perform its obligations under the Contract without the Variation; or
 - (B) terminate the Contract with immediate effect, except where the Contractor has already fulfilled part or all of the provision of the Services in accordance with the Contract or where the Contractor can show evidence of substantial work being carried out to provide the Services under the Contract,

and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure set out at Clause 42 (Dispute Resolution) of Schedule 2.

10.8 If the Parties agree the Variation, the Contractor shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

10.9 Within ten (10) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Contract from the Contractor the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Contract is approved. Following approval the Contractor shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

11 Guarantee ☐ (only applicable to the Contract if this box is checked)

11.1 Promptly following the execution of this Contract, the Contractor shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

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

12.1 The Authority may terminate this Contract at any time by giving one (1) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice. Such notice shall not be served before 30 June 2021.

12.2 Subject to Clauses 19 (Liability) and 20 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with Clause 12.1 of this Schedule 1, then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which

represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 12.1 of this Schedule 1.

12.3 The Authority shall not be liable under Clause 12.2 of this Schedule 1 to pay any sum which:

12.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

12.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Term; or

12.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

13 Measures to promote tax compliance ☐ (only applicable to the Contract if this box is checked)

13.1 The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 6.2 and 23.3.3 of Schedule 2, together with the associated definitions in Schedule 3, shall apply.

14 Authority step-in rights ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

14.1 If the Contractor is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule [insert schedule number].

15 Exit and Service Transfer ☐ (only applicable to the Contract if this box is checked)

- 15.1 In the event of the termination or expiry of the Contract for any reason the Contractor shall provide the Transitional Assistance Services to the Authority in accordance with the requirements of the Exit Plan and both Parties shall comply with their respective obligations 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 Authority shall pay the Transitional Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated the Contract pursuant to Clauses 22, 23.2 or 23.3 of Schedule 2.
- 15.3 The Contractor shall, within three (3) Months after the Commencement Date, produce an Exit Plan 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. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 12. If the Parties are unable to agree the contents of the Exit Plan within that ten (10) Working Day period, the principles set out in Schedule 12 shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.
- 15.4 The Contractor shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Contractor shall:
- 15.4.1 submit the revised Exit Plan to the Authority for review;
 - 15.4.2 within ten (10) Working Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 12 and the changes that have occurred in the Services since the Exit Plan was last agreed; and
 - 15.4.3 if the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.

- 15.5 Until the agreement of the Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 12 and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Contractor shall ensure that it is able to implement the Exit Plan at any time.
- 15.6 Within thirty (30) days after service of a Termination Notice by either Party or six (6) Months prior to the expiration of the Contract:
- 15.6.1 the Contractor shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval; and
- 15.6.2 the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 12; and
- 15.6.3 until the agreement of the updated Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.

16. Supply Chain Visibility ☐ (only applicable to the Contract if this box is checked)

Visibility of Sub-Contract Opportunities in the Supply Chain

- 16.1 The Contractor shall:
- 16.1.1 subject to clause 16.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
- 16.1.2 within 90 days of awarding a Sub-Contract to a Sub-contractor, update the notice on Contract Finder with details of the successful Sub-contractor;
- 16.2.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Tem;

- 16.2.4 provide reports on the information at clause 16.2.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
- 16.2.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 16.3 Each advert referred to at clause 16.1.1 of this Schedule 1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 16.4 The obligation on the Contractor set out at clause 16.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 16.5 Notwithstanding clause 16.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Contractor on Contracts Finder.

Visibility of Supply Chain Spend

- 16.6 In addition to any other management information requirements set out in the Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Relevant Authority which incorporates the data described in the Supply Chain Information Report Template which is:
- (a) the total contract revenue received directly on the Contract;
 - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 16.7 The SME Management Information Reports shall be provided by the Contractor in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Authority from time to time. The Contractor agrees that it shall

use the Supply Chain Information Report Template to provide the information detailed at clause 16.6 (a)–(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant Authority agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

- 16.8 The Contractor further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

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. Such an inspection and examination may be undertaken virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 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.

- 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 Subject to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2, the Parties may agree to extend the Term on one or more occasions prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. The provisions of the Contract will apply and take effect mutatis mutandis (subject to any Variation or adjustment to the Contract Price pursuant to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2 and Clause 5.3 of Schedule 4) throughout any such extended period.

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.

- 3.2 The Authority shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 3.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Clause 14 (Recovery of Sums Due) of this Schedule 2.
- 3.4 The Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf) in respect of the Authority's obligation to accept unstructured electronic invoices from the Contractor where and as required under that procurement policy note (as amended from time to time).

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 and in any event within thirty (30) days of receipt of the invoice. Where the Authority raises a query with respect to an invoice the Parties will liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the matter will be dealt with under the dispute resolution procedure set out at Clause 42 (Dispute Resolution) of Schedule 2. For the avoidance of doubt, the Authority shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 4.1 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Contractor and the Authority has then failed to pay such sum within thirty (30) days following such determination.
- 4.2 Subject to Clause 4.1 of this Schedule 2, the Authority shall pay the Contractor any sums due under such invoice no later than a period of thirty (30) 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 has failed to consider and verify the invoice and raise a query with respect to the invoice within thirty (30) days of receipt of the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2.
- 4.4 The Contractor shall submit an invoice to the Authority in accordance with Clause 3.3 of Schedule 6 and shall submit invoices to the Authority Monthly in arrears in accordance with Clause 2.3 of Schedule 6. 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.
- 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

- 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 4.9 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 4.9 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. In the event that the Parties agree to extend the Term pursuant to Clause 2 (Extension) of this Schedule 2 the Contract Price will remain unchanged for the period of extension unless otherwise agreed by the Parties.
- 5.2 Not used.
- 5.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 5.4 Not used.

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 not used;
- 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, as may be requested by the Authority from time to time pursuant to Clause 5.1 of Schedule 4.
- 7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

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 one (1) Month 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 one (1) Month 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. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 11.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Schedule 7 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 11.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.
- 11.4 At the Authority's request, within five (5) Working Days of such request, the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).
- 11.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.
- 11.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 11.6.1 whether the Contractor believes the objectives of the Contract were achieved;
 - 11.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 were achieved; and

11.6.3 to identify any lessons learnt for future projects.

11.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 11.6.1 to 11.6.3 of this Schedule 2 as it sees fit.

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. Such access may be granted virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.

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 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. The Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours

on reasonable notice to recover any such Property. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.

13.3 Upon receipt of the Property the Contractor shall subject it to:

13.3.1 a reasonable visual inspection, and

13.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.

13.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.

13.5 The Contractor shall ensure the security of all the Property whilst in its possession.

13.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

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;