

DATED 2ND DECEMBER 2024

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

AND

CENTRAL AND NORTH WEST LONDON NHS FOUNDATION TRUST

**MENTAL HEALTH APPROVAL PANEL FUNCTION
SERVICES 2025-30**

THE AUTHORITY	The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1 0EU acting as part of the Crown
THE CONTRACTOR	Central and North West London NHS Foundation Trust which is an authorised NHS Trust and whose registered office is at, 350 Euston Road, Regents Place, London, NW1 3AX

1. BACKGROUND

- 1.1. The Authority placed a contract notice in the Find a Tender Service under the following reference 2024/S 000-027861 on 02/09/2024 seeking tenders for the provision of Mental Health Approval Panel Function interested in entering into an arrangement for the supply of such services to the Authority.
- 1.2. On 02/09/2024 the Authority issued an invitation to tender (the “Invitation to Tender”). In response to the Invitation to Tender, the Contractor submitted a tender to the Authority on 08/10/2024 (“the Tender”). On the basis of the Tender, the Authority selected the Contractor to enter into an agreement to provide such services to the Authority.

2. THE CONTRACT

- 2.1. This Contract is made on the date set out above subject to the Order Form and the terms set out in the schedules annexed to the Contract (the “**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. In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 3 (Definitions and Interpretation) or the relevant Clause or Schedule in which that capitalised expression appears.

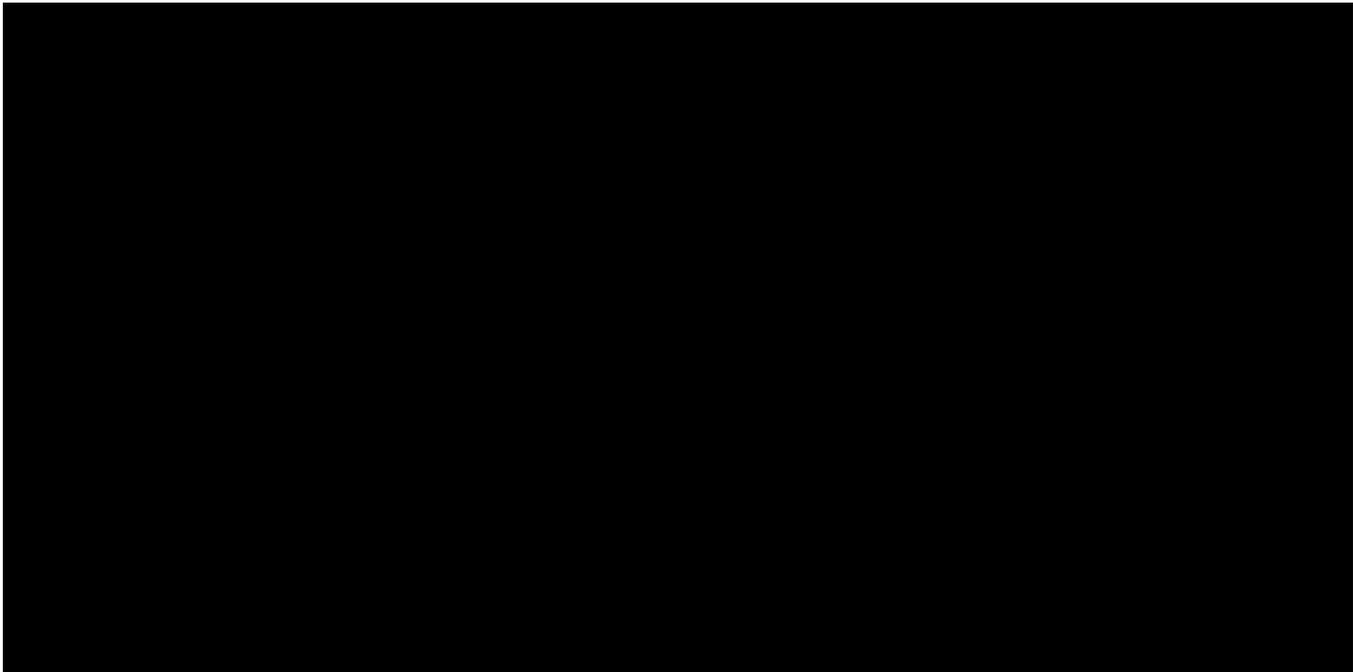
Order Form

1. Contract Reference	C318876
2. Contract Start Date	01/04/2025
3. Authority	Secretary of State for Health and Social Care 39 Victoria Street, Westminster, London SW1H 0EU
4. Contractor	Central and North West London NHS Foundation Trust which is an authorised NHS Trust and whose registered office is at, 350 Euston Road, Regents Place, London, NW1 3AX
5. The Contract	<p>The Contractor shall supply the Services described below on the terms set out in this Order Form and the Schedules and any Annexes.</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3 (Definition and Interpretation).</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <p>Please do not attach any contractor terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</p>
6. Services to be Supplied	Provision of services to deliver delegated duty under Section 12 of the Mental Health Act (MHA) to approve doctors that are sufficiently qualified to detain people under the Act for the purposes of assessment and/or treatment. Full description of the service is set out in Schedule 4 (Specification):
7. Optional Services	NA
8. Term	<p>The Term shall commence on 01/04/2025</p> <p>And the Expiry Date shall be 31/03/2027 (24 months initial service period) unless it is otherwise extended or terminated in accordance with the terms and conditions of the contract.</p> <p>The Authority may extend the Contract for a period or periods of up to 36 months on periods of 24 and 12 months maximum as a time by giving not less than three (3) Months notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period. The duration of this Contract shall be no longer than 5 years (60 months) in total.</p>

<p>9. Contract Price</p>	<p>The Contract Price for the provision of Services is set at £600,432 for the initial term. If the contract is extended, the total value shall not exceed £1,618,397 over a 5-year period, as detailed in Schedule 6 (Pricing).</p>
<p>10. Payment</p>	<p>All invoices must be send quoting a valid Purchase Order number.</p> <p>██</p> <p>██</p> <p>Within 10 Working Days of receipt of your countersigned copy of the Contract, we will send you a unique Purchase Order number (the “PO Number”). You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>All invoices must be send quoting a valid PO Number. Every payment request must be accompanied by a current statement of accounts; this is a standard commercial process and should show all invoices raised and amounts outstanding. Copy invoices requiring payment must be sent with all statement of accounts with supporting documents. The minimum supporting documents required are an invoice and packing list.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Authority Representative). 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 by email to:</p> <p>██</p>
<p>11. Authority Representative(s)</p>	<p>For general liaison your contact will be:</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p>

<p>12. Contractor Representative(s)</p>	<p>For general liaison your contact will be</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
<p>13. Address for notices</p>	<p>Authority:</p> <p>Department of Health and Social Care, 39 Victoria Street, Westminster, London SW1H 0EU</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Contractor:</p> <p>Mental Health Centre, Northwick Park Hospital, Harrow, HA1 3UJ</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>14. Key personnel</p>	<p>Authority:</p> <p>NA</p>	<p>Contractor:</p> <p>Panel Chair</p> <p>Vice Chair</p> <p>Contract Manager</p>
<p>15. Contractor Personnel Vetting</p>	<p>The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check.</p> <p>The Contractor shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “Relevant Conviction”), or is found by the Contractor 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>	

<p>16. Policies and Procedures</p>	<p>The Supplier shall perform the Service in accordance with the following Authority and cross-government policies and procedures:</p> <p>Government Cyber Security Strategy Government Cyber Security Strategy: 2022 to 2030 - GOV.UK (www.gov.uk)</p> <p>DHSC Counter Fraud Strategy DHSC counter fraud strategy: 2020 to 2023 - GOV.UK (www.gov.uk)</p> <p>To ensure the highest standards of data protection, Health and Safety (H&S), and Environment and Sustainability (E&S), the Buyer mandates that the Supplier have comprehensive policies and procedures in place to safeguard any data they collect, process, or handle on the Buyer's behalf, provide safe working environments, take responsibility for the environment, and comply with all relevant laws and regulations.</p>
<p>17. Critical Service Vailure</p>	<p>A service will be deemed a critical failure if its performance, as measured by the KPI, falls to the 'inadequate' level.</p>
<p>18. Service Period</p>	<p>The service period shall be the same as the contract term.</p>



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SCHEDULE 1 KEY PROVISIONS

STANDARD KEY PROVISIONS

3. APPLICATION OF THE KEY PROVISIONS

3.0. The standard Key Provisions at Clauses 3 to 5 of this Schedule 1 shall apply to this Contract.

3.1. The optional Key Provisions at Clauses 6 to 22 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

4. ORDER OF PRECEDENCE

4.1. If there is any conflict between any part of this Contract and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

4.1.1. Order Form;

4.1.2. Schedule 1 (Key Provisions);

4.1.3. Schedule 2 (General Terms and Conditions);

4.1.4. Schedule 3 (Definitions and Interpretation);

4.1.5. Schedule 4 (Specification);

4.1.6. any other Schedules and their Annexes (other than Schedule 5 (Tender)); and

4.1.7. Schedule 5 (Tender) and its Annexes (if any).

5. APPLICATION OF TUPE AT THE COMMENCEMENT OF THE PROVISIONS OF SERVICES

5.1. The Parties agree that:

5.1.1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 10 shall apply as follows:

(a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 10 shall apply;

- (b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of Schedule 10 shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Contractor Employees, Parts A and B of Schedule 10 shall apply; and
 - (d) Part C of Schedule 10 shall not apply;
- 5.1.2. where the commencement of the provision of the Services or a part of the Service does not result in a Relevant Transfer:
- (a) Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 shall not apply; and
 - (b) Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services

OPTIONAL KEY PROVISIONS

6. QUALITY ASSURANCE STANDARDS

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 6.1. The following quality assurance standards shall apply, as appropriate and in accordance with applicable Law and Guidance, to the provision of the Services:
- 6.1.1. Suppliers must possess a Cyber Essentials Scheme Certificate or ISO 27001 Information Security Management or equivalent at the Contract Start Date.

7. PURCHASE ORDERS

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 7.1. The Authority shall issue a Purchase Order to the Contractor in respect of any Services to be supplied to the Authority under this Contract. The Contractor shall comply with the terms of such Purchase Order as a term of this Contract and shall ensure that the any Purchase Order is clearly noted on each invoice. For the avoidance of doubt, any actions or work undertaken by the Contractor under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Contractor's risk and expense and the Contractor shall only be entitled to invoice for Services covered by a valid Purchase Order.

8. NA- IMPLEMENTATION PHASE

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED AND THE SCHEDULE INSERTED) THIS CLAUSE, THE FOLLOWING DEFINITIONS SHALL APPLY:

- 8.1.1. **“Delay”**: a delay in the successful achievement of a Milestone.
- 8.1.2. **“Detailed Implementation Plan”**: the detailed plan for the implementation of the Services that is developed in accordance with Clause 8.3 of this Schedule 1, as amended from time to time in accordance with the Change Control Process.
- 8.1.3. **“Implementation Plan”**: the Outline Implementation Plan unless and until it is superseded by the Detailed Implementation Plan.
- 8.1.4. **“Key Milestone”**: any Milestone which is identified as "key" in the Implementation Plan or by operation of the Change Control Process.
- 8.1.5. **“Key Milestone Date”**: the date for completion of any Key Milestone as set out in the Implementation Plan.
- 8.1.6. **“Milestone”**: an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
- 8.1.7. **“Milestone Date”**: the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.
- 8.1.8. **“Outline Implementation Plan”**: the outline plan set out in Schedule 17 for the implementation of the Services

Development of the Detailed Implementation Plan

- 8.2.** Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 27.5 (Provision of Services) of Schedule 2 to the Implementation Plan shall apply.
- 8.3.** The Detailed Implementation Plan shall be agreed as follows:
 - 8.3.1. the Contractor shall prepare and deliver to the Authority for the Authority’s approval a draft of the Detailed Implementation Plan within thirty (30) Working Days of the Commencement Date;

- 8.3.2. the Contractor shall not be entitled to propose any Variation to the Key Milestone Dates set out in the Outline Implementation Plan;
- 8.3.3. the Authority shall review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable.
- 8.3.4. following such review and consultation, the Authority shall formally approve or reject the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority. If the Authority rejects the draft Detailed Implementation Plan, the provision of Clause 8.4 (Rejection of Detailed Implementation Plan) of this Schedule 1 shall apply.
- 8.3.5. Once the draft Detailed Implementation Plan is approved, it shall replace the Outline Implementation Plan.

Rejection of Detailed Implementation Plan

- 8.4. The following shall apply if the Authority rejects the draft Detailed Implementation Plan:
 - 8.4.1. the Authority shall inform the Contractor in writing of its reasons for its rejection.
 - 8.4.2. The Contractor shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection.

The provisions of Clause 8.3 (Development of the Implementation Plan) of this Schedule 1 and this Clause 8.4 (Rejection of Detailed Implementation Plan) shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either party may refer any disputed matters for resolution in accordance with Clause 45 (Dispute Resolution) of Schedule 2 at any time.

Implementation

- 8.5. The Contractor shall perform each of the tasks identified in the Implementation Plan by the applicable Milestone Date assigned to the particular task in the Implementation Plan.
- 8.6. If the Contractor is relying on a dependency to be performed by the Authority in order to achieve a Milestone or Key Milestone, the Contractor shall ensure that any such dependency is:
 - 8.6.1. incorporated into the Implementation Plan; and

- 8.6.2. notified to the Authority at least ten (10) days prior to the date when the Contractor requires the dependency to be performed and completed by the Authority.
- 8.7. In the event that the Contractor fails to comply with Clause 8.6, above, any non-performance of a dependency by the Authority shall not be treated as a Default by the Authority and the Authority shall use reasonable endeavours to complete such dependency as soon as reasonably practicable.
- 8.8. If, at any time, the Contractor becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Authority of the fact of the Delay, the reasons for the Delay, the consequences of the Delay for the rest of the Implementation Plan and how the Contractor proposes to mitigate the Delay.
- 8.9. Subject to Clause 8.10.2 of this Schedule 1, the Parties acknowledge that the Contract Price shall not be increased as a result of a Delay.
- 8.10. The Parties acknowledge that:
- 8.10.1. where a Delay is caused by a Default of the Contractor, the Authority shall be entitled to claim any direct loss and/or expense that cannot be mitigated that it incurs as a result of the Default of the Contractor; and
- 8.10.2. where a Delay is caused by a Default of the Authority (and for the purposes of this Clause 8.10.2, a Delay caused by a failure of the Authority to perform a dependency specified in the Implementation Plan shall only be treated as a Default of the Authority in accordance with the provisions of Clauses 8.6 and 8.7 of this Schedule 1) and the Contractor has demonstrated to the Authority's satisfaction that it has incurred a direct loss and/or expense as a result of the Default of the Authority, in which circumstance the Contractor shall be entitled to compensation to the extent that it cannot mitigate that loss or expense.
- 8.11. Any disputes about or arising out of Delays shall be resolved through the dispute resolution procedure set out in Clause 45 (Dispute Resolution) of Schedule 2. Pending the resolution of the dispute, both parties shall continue to work together to resolve the causes of, and mitigate the effects of, the Delay.

9. SERVICES COMMENCEMENT DATE

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED AND THE DATE IS INSERTED IN CLAUSE 9.1 OF THIS SCHEDULE 1)

- 9.1. The Services Commencement Date shall be 01/04/2025

10. PRICE ADJUSTMENT ON EXTENSION OF TERM

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 10.1.** The Contract Price shall apply for the Term. In the event that the Authority agrees to extend the Term pursuant to Clause 32.2 (Term) of Schedule 2 the Authority shall, in the six (4) Month period prior to the expiry of the Term or, as the case may be, in such other period as may be appropriate, enter into discussion, in good faith, with the Contractor (for a period of not more than thirty (30) Working Days) to agree a Variation to the Contract Price.
- 10.2.** If the Parties are unable to agree a Variation to the Contract Price in accordance with Clause 10.1 of this Schedule 1, the Contract shall terminate at the end of the Term.
- 10.3.** 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.
- 10.4.** Any increase in the Contract Price pursuant to Clause 10.1 of this Schedule 1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI).
- 10.5.** The relevant adjustment shall be:
- 10.5.1. Applied on the first day of the second April Following the Contract Start Date and on the first day of April in each subsequent year (each such date an 'adjustment date').
 - 10.5.2. Determined by multiplying the relevant amount or sum by the percentage increase or change in the CPI published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
 - 10.5.3. If the percentage increase or change in the CPI as described in clause 8.5.2 is less than or equal to 5%, the contract price will remain unchanged. This is because the contract already accounts for a 5% annual increase from the date of the contract award.
- 10.6.** Except as set out in this clause 8, neither the chargers nor any other costs, expenses fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the contractor or subcontractors of the performance of their obligations.

- 11. **NA - OPTIONAL SERVICES**
- 12. **NA- TERMINATION FOR CONVENIENCE**
- 13. **DIFFERENT LEVELS AND/OR TYPES OF INSURANCE**

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED AND THE TABLE SETS OUT THE REQUIREMENTS)

- 13.1. 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	£5,000,000
Public Liability	£5,000,000
Professional Indemnity	£2,000,000

11 A NA- INSURANCE, CLAIM NOTIFICATIONS AND LIMITS

- 14. **INCLUSION OF A CHANGE CONTROL PROCESS**

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 14.1. 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 14 (Inclusion of a Change Control Process) of this Schedule 1.
- 14.2. 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.
- 14.3. A Party may request a Variation by completing a draft 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.
- 14.4. The Contractor may be required to provide an Impact Assessment of the proposed Variation on the Services either:

- 14.4.1. with the Variation Form, where the Contractor requests the Variation; or
- 14.4.2. within 10 Working Days following receipt of a draft Variation Form requested by the Authority, or such other time agreed by the Parties.
- 14.5. The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 14.6. In the event that the Variation to the Contract cannot be agreed or resolved by the Parties, the Authority can either:
 - 14.6.1. agree that the Contract continues without the Variation;
 - 14.6.2. terminate the Contract with immediate effect, unless the Contractor has already provide part or all of the Services, or where the Contractor can show evidence of substantial work being carried out to provide the Services; or
 - 14.6.3. refer the matter to be resolved in accordance with the dispute resolution procedure in accordance with Clause 45 (Dispute Resolution) of Schedule 2.
- 14.7. 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.
- 14.8. 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.

15. GUARANTEE

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 15.1. Promptly following the execution of this Contract or at any time during the life of the contract the Authority may require from the Contractor shall to deliver an executed deed of guarantee to the Authority. Failure to comply with this Key Provision, if applicable, shall be an irremediable breach of this Contract.

16. MEASURES TO PROMOTE TAX COMPLIANCE **(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)**

- 16.1.** The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clauses 35.2 (Warranties) and 42.2.9 (Termination) of Schedule 2 together with the associated definitions in Schedule 3 (Definitions and Interpretation), shall apply.

17. AUTHORITY STEP-IN RIGHTS **(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED AND THE SCHEDULE INSERTED)**

- 17.1.** If the Contractor is unable to provide the Services then the Authority shall be entitled to exercise Step-In Rights set out in Schedule 15.

18. EXIT AND SERVICE TRANSFER **(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)**

- 18.1.** 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 (Exit Plan and Service Transfer Arrangements). The Contractor shall cooperate 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.
- 18.2.** The Authority shall pay the Transitional Assistance Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated the Contract pursuant to Clause 42 (Termination) of Schedule 2.
- 18.3.** The Contractor shall, within three (3) Months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) 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 (Exit Plan and Service Transfer Arrangements). 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 (Exit Plan and Service Transfer Arrangements) shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 45 (Dispute Resolution) of Schedule 2.

- 18.4.** 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:
- 18.4.1. submit the revised Exit Plan to the Authority for review;
 - 18.4.2. 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 (Exit Plan and Service Transfer Arrangements) and the changes that have occurred in the Services since the Exit Plan was last agreed; and
 - 18.4.3. 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 45 (Dispute Resolution) of Schedule 2.
- 18.5.** 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 (Exit Plan and Service Transfer Arrangements) 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.
- 18.6.** Within thirty (30) days after service of a Termination Notice by either Party or six (6) Months prior to the expiration of the Contract:
- 18.6.1. 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
 - 18.6.2. 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 (Exit Plan and Service Transfer Arrangements) ; and

18.6.3. 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.

19. NA - SUPPLY CHAIN VISIBILITY

20. NA - TACKLING MODERN SLAVERY

21. BUSINESS CONTINUITY AND DISASTER RECOVERY

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

21.1. At least thirty (30) Working Days prior to the Services Commencement Date the Contractor shall prepare and deliver to the Authority for the Authority's written approval a BCDR Plan, which shall detail the processes and arrangements that the Contractor shall follow to:

21.1.1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

21.1.2. the recovery of the provision of the Services in the event of a disaster

21.2. Following receipt of the draft BCDR Plan from the Contractor, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with Clause 45 (Dispute Resolution) of Schedule 2.

21.3. The Contractor shall test its BCDR Plan at reasonable intervals, and in any event no less than once every twelve (12) Months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Contractor's business operations. The Contractor shall promptly provide to the Authority, at the Authority's written request, copies of its BCDR Plan, reasonable and proportionate documentary evidence that the Contractor tests its BCDR Plan in accordance with the requirements of this Clause 21.3 of this Schedule 1 and reasonable and proportionate information regarding the outcome of such tests. The Contractor shall provide to the Authority a copy of any updated or revised BCDR Plan within fourteen (14) Working Days of any material update or revision to the BCDR Plan.

21.4. The Authority may suggest reasonable and proportionate amendments to the Contractor regarding the BCDR Plan at any time. Where the Contractor, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Contractor will incorporate into the BCDR Plan all such suggestions made by the Authority in respect of such

BCDR Plan. Should the Contractor not incorporate any suggestion made by the Authority into such BCDR Plan it will explain the reasons for not doing so to the Authority.

21.5. Should a Business Continuity Event occur at any time, the Contractor shall implement and comply with its BCDR Plan and provide regular written reports to the Authority on such implementation. During and following a Business Continuity Event, the Contractor shall use reasonable endeavours to continue to supply the Services in accordance with this Contract.

22. NA - CARBON FOOTPRINT / NET ZERO OBLIGATIONS

23. NA - SUSTAINABILITY REPORTING

21 A. SOCIAL VALUE – KEY PERFORMANCE INDICATORS

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

21 A.1. The Contractor shall complete the table of Social Value Key Performance Indicators (“SV KPIs”) for each Contract Year in relation its provision of the Services under this Contract and provide the SV KPIs to the Authority on the date and frequency outlined in Clause 21 A.4 of this Schedule 1.

SV KPIs

21 A.2. The Contractor shall deliver to the Authority the SV commitments set out in the Social Value Envelope – Schedule 5 - Tender. The Contractor acknowledges that the Authority may make reasonable adjustments to the SV KPIs during the Term.

21 A.3. The Contractor shall provide such SV KPIs in accordance with guidance provided by the Guide to using the Social Value Model by the Government Commercial Function.

21 A.4. Table of SV KPIs

Key Performance Indicators=Milestones	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy= Remedial Action
Social Value commitments	100%	>85% <100%	<85% >75%	<75%

24. SERVICE LEVELS – KEY PERFORMANCE INDICATORS

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

24.1. This Clause, the following definitions shall apply:

24.1.1. “Critical Service Level Failure”: has the meaning given to it in the Order Form;

24.1.2. “Escalation Meeting” means a meeting between the authorised representatives of the Contractor and the Authority to address issues that have arisen during the Rectification Plan Process;

24.1.3. “Notifiable Default” means

(a) the Contractor commits a material Default; and/or

(b) the performance of the Contractor is likely to cause or causes a Critical Service Level Failure;

24.1.4. “Rectification Plan” means the Contractor’s plan (or revised plan) to rectify its breach using the template at Annex to Part C which shall include:

(a) full details of the Notifiable Default that has occurred, including a root cause analysis;

(b) the actual or anticipated effect of the Notifiable Default; and

(c) the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);

24.1.5. “Rectification Plan Process” means the process set out in the Annex to Part C;

24.1.6. “Service Level Failure” means a failure to meet the Service Level Performance Measure in respect of a Service Level;

24.1.7. “Service Level Performance Measure” shall be as set out against the relevant Service Level in the Annex to Part A of this Clause 22 of this Schedule 1;

24.1.8. “Service Level Threshold” shall be as set out against the relevant Service Level in the Annex to Part A of this Clause 22 of this Schedule 1; and

24.1.9. "Service Period" has the meaning given to it in the Order Form.

Service Levels

24.2. The Contractor shall at all times provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.

24.3. The Contractor acknowledges that any Service Level Failure shall entitle the Authority to the rights set out in Part A of this Clause 22 of this Schedule 1

24.4. The Contractor shall send Performance Monitoring Reports to the Authority detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Clause 22 of this Schedule 1 and as set out in Schedule 4 - Specifications.

Critical Service Level Failure

24.5. On the occurrence of a Critical Service Level Failure:

24.5.1. the Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Contract Price which would otherwise have been due to the Contractor in respect of that Service Period ("Compensation for Critical Service Level Failure"), provided that the operation of this clause 22.5 of this Schedule 1 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Contractor for material Default.

Part A: Service Levels

Service Levels

24.6. If the level of performance of the Contractor:

24.6.1. is likely to or fails to meet any Service Level Performance Measure; or

24.6.2. is likely to cause or causes a Critical Service Level Failure to occur, the Contractor shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without limiting any other of its rights, may:

(A) require the Contractor to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

(B) instruct the Contractor to comply with the Rectification Plan Process;

ANNEX TO PART A: SERVICES LEVELS AND SERVICE

Key Performance Indicators=Milestones	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy =Remedial action
Completion reports	100%	>85% <100%	<85% >75%	<75%
Data breaches reported within maximum of 10 hours of the contractor being aware of the breach	100%	>85% <100%	<85% >75%	<75%
Complaints received by applicants	0	>0 <5	≥5 <10	<10%

Part B: Performance Monitoring

Performance Monitoring and Performance Review

24.7. The Contractor shall provide the Authority with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to paragraph 22 of Part B of this Clause 22 of this Schedule 1 and as set out in Schedule 5 – Specifications which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 24.7.1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- 24.7.2. a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 24.7.3. details of any Critical Service Level Failures;
- 24.7.4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 24.7.5. such other details as the Authority may reasonably require from time to time.

24.8. The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a quarterly basis. The Performance Review Meetings will be the forum for the review by the Contractor and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall:

- 24.8.1. take place within one (1) week of the Performance Monitoring Reports being issued by the Contractor at such location and time (within normal business hours) as the Authority shall reasonably require;
 - 24.8.2. be attended by the Contractor's Representative and the Authority's Representative; and
 - 24.8.3. be fully minuted by the Contractor and the minutes will be circulated by the Contractor to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting.
- 24.9.** The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Contractor's Representative and the Authority's Representative at each meeting.
- 24.10.** The Contractor shall provide to the Authority such documentation as the Authority may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of Service Credits for any specified Service Period.

Satisfaction Surveys

- 24.11.** The Authority may undertake satisfaction surveys in respect of the Contractor's provision of the Services. The Authority shall be entitled to notify the Contractor of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

ANNEX TO PART C: RECTIFICATION PLAN PROCESS

Rectifying issues

- 24.12.** If there is a Notifiable Default, the Contractor must notify the Authority within 3 Working Days and the Authority can, without limiting its other rights, may request that the Contractor provide a Rectification Plan within 10 Working Days alongside any additional documentation that the Authority requires.
- 24.13.** When the Authority receives a requested Rectification Plan it can either:
- 24.13.1. reject the Rectification Plan or revised Rectification Plan, giving reasons; or
 - 24.13.2. accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Contractor must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.
- 24.14.** Where the Rectification Plan or revised Rectification Plan is rejected, the Authority:

- 24.14.1. will give reasonable grounds for its decision; and
- 24.14.2. may request that the Contractor provides a revised Rectification Plan within 5 Working Days.

Escalating issues

24.15. If the Contractor fails to:

- 24.15.1. submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 22.17 or 22.19; and
- 24.15.2. adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.
- 24.15.3. or if the Authority otherwise rejects a Rectification Plan, the Authority can require the Contractor to attend an Escalation Meeting on not less than 5 Working Days' notice. The Authority will determine the location, time and duration of the Escalation Meeting(s) and the Contractor must ensure that the authorised representative of the Contractor is available to attend.

24.16. The Escalation Meeting(s) will continue until the Authority is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the dispute resolution set out in Clause 19 (Dispute Resolution) of Schedule 2.

24.17. If the Contractor is in Default of any of its obligations under this Clause 22, the Authority shall be entitled to terminate this Agreement under Clause [] .

The Rectification Plan

Request for [Revised] Rectification Plan	
Details of the Default	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]
Deadline for receiving the [Revised] Rectification Plan	[add date (minimum 10 days from request)]
Signed by Authority	
Date	
Contractor [Revised] Rectification Plan	
Cause of the Default	[add cause]
Anticipated impact assessment	[add impact]
Actual effect of Default	[add effect]

Steps to be taken to rectification	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
Timescale for complete Rectification of Default	[X] Working Days	
Steps taken to prevent recurrence of Default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
Signed by the Contractor		
Date		
Review of Rectification Plan Contractor		
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]	
Reasons for rejection (if applicable)	[add reasons]	
Signed by Contractor		
Date		

25. THE COLLABORATIVE WORKING PRINCIPLES

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

- 25.1.** The Parties agree that the Collaborative Working Principles will apply, the Contractor must co-operate and provide reasonable assistance to any Authority Third Party and act at all times in accordance with the following principles:
- 25.1.1. proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
 - 25.1.2. being open, transparent and responsive in sharing relevant and accurate information with Authority Third Parties;
 - 25.1.3. adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Authority Third Parties;
 - 25.1.4. providing cooperation, support, information and assistance to Authority Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and

- 25.1.5. identifying, implementing and capitalising on opportunities to improve Service and deliver better solutions and performance throughout the relationship lifecycle.

26. NA - INTELLECTUAL PROPERTY RIGHTS - OPTIONS

SCHEDULE 2 GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

27. PROVISION OF SERVICES

27.1. The Contractor shall ensure that the Services:

- 27.1.1. comply in all respects with the Specification;
- 27.1.2. are supplied promptly and in any event within any time limits as may be set out in this Contract;
- 27.1.3. are supplied in accordance with the Contractor's Tender and the provisions of this Contract.

27.2. The Contractor shall:

- 27.2.1. perform its obligations under this Contract, including in relation to the supply of the Services in accordance with:
 - (a) all applicable Law;
 - (b) in accordance with the Anti-slavery Policy and if Key Provision 20 (Tackling Modern Slavery) shall apply in accordance with the Authority's Anti-slavery Policy; and
 - (c) Good Industry Practice;
 - (d) any quality assurance standards as set out in the Key Provisions; and
 - (e) the Contractor's own established procedures and practices to the extent that the same do not conflict with the requirements of Clauses 27.2.1(a) to 27.2.1(d), above; and
- 27.2.2. deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

27.3. In the event that the Contractor becomes aware of any inconsistency between the requirements of Clauses 27.2.1(a) to 27.2.1(d) of this Schedule 2, the Contractor shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

27.4. The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.

- 27.5.** Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan.
- 27.6.** The Contractor shall commence delivery of the Services on the Services Commencement Date, if specified in Clause 9 (Services Commencement Date) of Schedule 1.
- 27.7.** The Contractor shall comply fully with its obligations set out in the Specification and the Tender.
- 27.8.** 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.
- 27.9.** The Contractor shall notify the Authority as soon as it becomes aware of:
- 27.9.1. any breach, or potential breach, of the Anti-slavery Policy and if Key Provision 20 applies, any breach, or potential breach, of the Authority's Anti-slavery Policy; or
 - 27.9.2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

28. KEY PERSONNEL

- 28.1.** The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 28.2.** The Contractor shall not remove or replace any Key Personnel unless:
- 28.2.1. requested to do so by the Authority;
 - 28.2.2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 28.2.3. 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
 - 28.2.4. the Contractor obtains the Authority's prior written consent.
- 28.3.** The Authority shall not unreasonably withhold its consent under Clause 28.2.4 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.

29. CONTRACTOR PERSONNEL

29.1. At all times, the Contractor shall ensure that:

29.1.1. 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;

29.1.2. there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;

29.1.3. only those people who are authorised by the Contractor are involved in providing the Services; and

29.1.4. 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.

29.2. The Authority may refuse to grant access to and remove any of the Contractor Personnel who do not comply with Clause 29.1 of this Schedule 2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.

29.3. 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 to a professional standard. 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.

29.4. 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.

29.5. 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.

- 29.6.** If the Contractor fails to comply with Clause 29.4 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.
- 29.7.** 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 29.4 of this Schedule 2 shall be final and conclusive.

Income Tax and National Insurance Contributions

- 29.8.** 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:
- 29.8.1. 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
- 29.8.2. 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.
- 29.9.** In the event that any one of the Contractor Personnel is a Worker as defined in Clause 64 of Schedule 3 (Definitions and Interpretation) who receives consideration relating to the Services, then the Contractor shall ensure that its contract with the Worker contains the following requirements:
- 29.9.1. 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 29.8 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;

- 29.9.2. 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 29.9.1 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 29.8 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and
- 29.9.3. 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.

30. MANNER OF CARRYING OUT THE SERVICES

- 30.1.** 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.
- 30.2.** 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.
- 30.3.** 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.
- 30.4.** 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.

31. USE OF AUTHORITY EQUIPMENT

- 31.1.** 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.

31.2. 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.

31.3. Upon receipt of the Property the Contractor shall subject it to:

31.3.1. a reasonable visual inspection, and

31.3.2. 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.

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

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

31.6. 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.

32. TERM

32.1. This Contract shall commence on the Services Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

32.2. The Authority shall be entitled to extend the Term on one or more occasions by giving the Contractor written notice not less than three (3) Months 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 Order Form. 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 10 (Price Adjustment on Extension of Term) of the Key Provisions, if applicable) throughout any such extended period.

33. CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

33.1. 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.

- 33.2.** The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in Schedule 7 (Contract Monitoring) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 33.3.** The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall reasonably 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.
- 33.4.** 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).
- 33.5.** 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.
- 33.6.** The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 33.6.1. whether the Contractor believes the objectives of the Contract were achieved;
 - 33.6.2. how far the intended benefits sought in the Authority's Specification and that had been forecast in the Tender were achieved; and
 - 33.6.3. to identify any lessons learnt for future projects.
- 33.7.** The Authority shall be able to share and use any information arising from such meetings referred to in Clause 33.6 of this Schedule 2 as it sees fit.

34. PRICE AND PAYMENT

Contract Price

- 34.1.** In consideration of the Contractor carrying out its obligations under the Contract, including the provision of the Services, the Authority shall pay the Contractor the Contract Price in accordance with this Clause 34 (Price and Payment) of this Schedule 2. The Contract Price shall remain fixed for the Term.
- 34.2.** The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 42.5 (Termination) 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.

- 34.3.** The Authority may retain or 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.

VAT

- 34.4.** The Contract Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 34.5.** The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that 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 this Contract. Any amounts due under this Clause 34.5 shall be paid in cleared funds by the Contractor to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Invoicing

- 34.6.** The Contractor shall submit an invoice to the Authority Monthly in arrears. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice. Where travel and subsistence is claimed, all claims must comply with the provisions set out in the Schedule 6 and must be accompanied by appropriate receipts to cover the total amount claimed.
- 34.7.** The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 8.6 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. If there is undue delay in verifying the invoice in accordance with this Clause 8.7 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 8.7 after a reasonable time has passed

Recovery of Sums Due

- 34.8.** The Authority shall be entitled to withhold payment due under this Clause 34 (Price and Payment) 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 51.11 (Assignment, Novation and Sub-contracting) 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

- 34.9.** 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.
- 34.10.** For the purposes of clause 34.9, 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.
- 34.11.** 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).

35. WARRANTIES

- 35.1.** The Contractor represents and warrants that:
- 35.1.1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 35.1.2. it has full capacity and authority (including, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract;
 - 35.1.3. this Contract is executed by a duly authorised representative of the Contractor;
 - 35.1.4. all necessary rights, authorisations, licences, consents and regulatory approvals (including in relation to IPR) are in place to enter into this Contract, enable the Contractor to perform its obligations under the Contract and for the Authority to receive the Services;
 - 35.1.5. in entering the Contract it has not committed any Fraud;
 - 35.1.6. all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the selection questionnaire and invitation to tender (if applicable), its tender and any other documents submitted remain true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;

- 35.1.7. it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under the Contract;
- 35.1.8. its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 35.1.9. its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 35.1.10. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 35.1.11. 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;
- 35.1.12. it owns, has obtained, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and/or the receipt of the Services by the Authority;
- 35.1.13. in the three (3) years prior to the Commencement Date:
 - (a) 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

35.2. 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:

35.2.1. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

35.2.2. 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.

35.3. The Contractor warrants and undertakes to the Authority that:

35.3.1. its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and

35.3.2. neither the Contractor nor any of its Contractor Personnel:

(a) 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

35.3.3. it shall at all times conduct its business in a manner that is consistent with any anti-slavery policy of the Authority that is notified to the Contractor and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Contractor's compliance with this Clause 35.3.3 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery policy.

35.4. 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.

- 35.5.** The representations and warranties set out in this Clause 35 (Warranties) of this Schedule 2 shall be deemed to be repeated by the Contractor on the Services Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 35.6.** Each of the representations and warranties set out in this Clause 35 (Warranties) of this Schedule 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 35.7.** If at any time the Contractor becomes aware that a representation or warranty given by it under this Clause 35 (Warranties) has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 35.8.** For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.
- 35.9.** Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

36. INTELLECTUAL PROPERTY

- 36.1.** Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 36.2.** Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

36.3. Licences granted by the Contractor: Contractor's Existing IPR

- 36.3.1.** Where the Authority orders Services which contain or rely upon Contractor's Existing IPR, the Contractor hereby grants the Authority a Contractor's Existing IPR Licence on the terms set out in Paragraph 36.3.2.
- 36.3.2.** The Contractor gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license the Contractor's Existing IPR which is reasonably required by the Authority to enable it:

(A) or any End User to use and receive the Services; or

(B) to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Authority's or any other Public Sector Body's) business or function.

36.4. Licences granted by the Authority and New IPR

- 36.4.1. Any New IPR created under the Contract is owned by the Authority. The Authority gives the Contractor a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Term.
- 36.4.2. Where a Party acquires ownership of IPR 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.
- 36.4.3. Unless otherwise agreed in writing, the Contractor and the Authority will record any New IPR in the table at Annex 1 to this Clause 10 of this Schedule 2 and keep this updated throughout the Term.

36.5. Open Licence Publication

- 36.5.1. Subject to Paragraph 36.5.4, the Contractor agrees that the Authority may at its sole discretion publish under Open Licence all or part of the New IPR Items.
- 36.5.2. Subject to Paragraph 36.5.4, the Contractor hereby warrants that the New IPR Items are suitable for release under Open Licence.
- 36.5.3. The Contractor will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from the Contractor ("Authority Open Licence Request").
- 36.5.4. The Contractor may within 15 days of a Authority Open Licence Request under Paragraph 36.5.3 request in writing that the Contractor excludes all or part of:
 - (a) the New IPR; or
 - (b) Contractor's Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Authority pursuant to Paragraph 36.5.3, from Open Licence publication.
- 36.5.5. Any decision to Approve any such request from the Contractor pursuant to Paragraph 36.5.4 shall be at the Authority's sole discretion, not to be unreasonably withheld, delayed or conditioned.

- 36.5.6. Subject to Clauses 40 (Indemnity and Limitation of Liability) and 41 (Insurance) of Schedule 2, the Authority will not be liable in the event that any Contractor's Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Contractor.

36.6. Third Party IPR

- 36.6.1. The Contractor shall not use in the delivery of the Services any Third Party IPR unless Prior written consent of the Authority is granted by the Authority and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 36.6.3. If the Contractor cannot obtain for the Authority a licence on the terms set out in Paragraph 36.6.3 in respect of any Third Party IPR the Contractor shall:

- (a) notify the Authority in writing; and
- (b) use the relevant Third Party IPR only if the Authority has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

- 36.6.2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Services under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

- 36.6.3. The Third Party IPR Licence granted to the Authority shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Authority to enable it or any End User to receive and use the Services and make use of the Services provided by a Replacement Contractor.

36.7. Termination of licences

- 36.7.1. The Contractor's Existing IPR Licence granted pursuant to Paragraph 36.3 and the Third Party IPR Licence granted pursuant to Paragraph 36.6 shall survive the Expiry Date and termination of this Contract.

- 36.7.2. The Contractor shall, if requested by the Authority in accordance with Schedule 12 (Exit Plan and Service Transfer Arrangements) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Contractor, grant (or procure the grant) to the Replacement Contractor a licence to use any Contractor's Existing IPR or Third Party IPR on terms equivalent to the Contractor's Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.

- 36.7.3. Any licence granted to the Contractor pursuant to Paragraph 36.4 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Contractor shall:
- (a) immediately cease all use of the Authority's Existing IPR (including the Authority Data within which the Authority's Existing IPR may subsist);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority's Existing IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority's Existing IPR and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority's Existing IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Contractor containing such Authority's Existing IPR or Authority Data.

37. AUTHORITY DATA

- 37.1.** The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 37.2.** 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.
- 37.3.** 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.
- 37.4.** 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.
- 37.5.** 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.
- 37.6.** 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.

37.7. 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:

37.7.1. 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

37.7.2. itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

37.8. 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.

38. PROTECTION OF PERSONAL DATA

Status of the Controller

38.1. 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:

38.1.1. "Controller" (where the other Party acts as the "Processor");

38.1.2. "Processor" (where the other Party acts as the "Controller");

38.1.3. "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

38.1.4. "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

38.2. 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.

- 38.3.** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 38.4.** 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:
- 38.4.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 38.4.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 38.4.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 38.4.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 38.5.** The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 38.5.1. process that Personal Data only in accordance with Schedule 13 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 38.5.2. ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 36 (Authority Data), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 38.5.3. ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 13 (Processing, Personal Data and Data Subjects));

- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Processor's duties under this Clause 38 (Protection of Personal Data), Clause 36 (Authority Data) and Clause 53 (Confidential Information) of this Schedule 2;
 - ii. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data;
- (c) not transfer Personal Data outside of the EU, other than to the Controller, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Section 75 of the DPA 2018) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

- 38.6.** Subject to Clause 38.7 of this Schedule 2, the Processor shall notify the Controller immediately if it:
- 38.6.1. receives a Data Subject Request (or purported Data Subject Request);
 - 38.6.2. receives a request to rectify, block or erase any Personal Data;
 - 38.6.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 38.6.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 38.6.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 38.6.6. becomes aware of a Data Loss Event.
- 38.7.** The Processor's obligation to notify under Clause 38.6 of this Schedule 2 shall include the provision of further information to the Controller in phases, as details become available.
- 38.8.** Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 38.6 of this Schedule 2 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 38.8.1. the Controller with full details and copies of the complaint, communication or request;
 - 38.8.2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 38.8.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 38.8.4. assistance as requested by the Controller following any Data Loss Event; and/or
 - 38.8.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

- 38.9.** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 38.9.1. the Controller determines that the Processing is not occasional;
 - 38.9.2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 38.9.3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 38.10.** The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 38.11.** The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 38.12.** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 38.12.1. notify the Controller in writing of the intended Sub-processor and Processing;
 - 38.12.2. obtain the written consent of the Controller;
 - 38.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 38 (Protection of Personal Data) such that they apply to the Sub-processor; and
 - 38.12.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 38.13.** The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 38.14.** The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 38.15.** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend

this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

38.16. In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the GDPR based on the terms set out in Annex 1 to Schedule 13 (Processing, Personal Data and Data Subjects).

Where the Parties are Independent Controllers of Personal Data

38.17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under a Joint Controller arrangement of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

38.18. Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

38.19. Where a Party has provided Personal Data to the other Party in accordance with Clause 38.17 of this Schedule 2, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

38.20. The Parties shall be responsible for their own compliance with Articles 13 and 14 of the GDPR in respect of the Processing of Personal Data for the purposes of this Contract.

38.21. The Parties shall only provide Personal Data to each other:

38.21.1. to the extent necessary to perform the respective obligations under this Contract;

38.21.2. in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and

38.21.3. where it has recorded it in Schedule 13 (Processing, Personal Data and Data Subjects).

38.22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of

Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

38.23. A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 of the GDPR and shall make the record available to the other Party upon reasonable request.

38.24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**the Request Recipient**"):

38.24.1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

38.24.2. where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:

(a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and

(b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request.

38.25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Contract and shall:

38.25.1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

38.25.2. implement any measures necessary to restore the security of any compromised Personal Data;

38.25.3. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

38.25.4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

- 38.26.** Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 13 (Processing, Personal Data and Data Subjects).
- 38.27.** Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 13 (Processing, Personal Data and Data Subjects).
- 38.28.** Notwithstanding the general application of Clauses 38.2 to 38.15 of this Schedule 2 to Personal Data, where the Contractor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an independent Controller of Personal Data in accordance with Clauses 38.16 to 38.27 of this Schedule 2.

39. RECORDS RETENTION AND RIGHT OF AUDIT

- 39.1.** The Contractor shall in accordance with the GDPR 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 including records and accounts which the Authority has a right to audit.
- 39.2.** 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.
- 39.3.** For the purpose of:
- 39.3.1. the examination and certification of the Authority's accounts; or
 - 39.3.2. 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
- 39.4.** 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. The Parties will bear their own costs when an audit is undertaken unless the audit identifies a material Default by the Contractor, in which case the Contractor will repay the Authority's reasonable costs in connection with the audit.

40. INDEMNITY AND LIMITATION OF LIABILITY

40.1. Subject to the limitations of liability set out in this Clause 40 (Indemnity and Limitation of Liability) and without prejudice to any rights and remedies of the Authority, the Contractor shall indemnify the Authority, and keep it indemnified, from and against any and all Losses whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) out of the act, default, negligence, breach of contract, breach of statutory or statutory duty by the Contractor or any of its employees or agents acting within the course of their employment or any of its Sub-contractors and their employees or agents.

Unlimited liability

40.2. Neither Party excludes or limits liability to the other Party for:

40.2.1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

40.2.2. bribery or Fraud or fraudulent misrepresentation by it or its employees;

40.2.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or; or

40.2.4. any liability to the extent it cannot be limited or excluded by Law.

40.3. The Contractor's liability in respect of the indemnities in Clauses 29.8 (Income Tax and National Insurance Contributions), Clause 34.4 (VAT), Clause 36.4.3 (Intellectual Property), of Schedule 2, Schedule 10 (Staff Transfer) and the Annexes to Schedule 10 (Staff Transfer) shall be unlimited.

40.4. The Authority's liability in respect of the indemnities in Schedule 10 (Staff Transfer) and the Annexes to Schedule 10 (Staff Transfer) shall be unlimited.

Financials and other limits

40.5. Subject to Clauses 40.2, 40.3, 40.4 (Unlimited liability) and Clause 40.7 (Consequential Losses) of this Schedule 2:

40.5.1. the Contractor's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;

- 40.5.2. the Contractor's aggregate liability in respect of:
- (a) loss or damage to Authority Data; and
 - (b) breach of the Data Protection Legislation;
 - (c) that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;
- 40.5.3. in respect of all other Losses, the aggregate liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the greater of:
- (a) £5,000,000; or
 - (b) one hundred and twenty five per cent (125%) of the total Contract Price paid or payable by the Authority to the Contractor for the Services.

40.6. If the total Contract Price paid or payable by the Authority to the Contractor over the Term:

- 40.6.1. is less than or equal to **£1,000,000** then the figure of **£5,000,000** at Clause 40.5.3 of this Schedule 2 shall be replaced with **£1,000,000**;
- 40.6.2. is less than or equal to **£3,000,000** but greater than **£1,000,000**, then the figure of **£5,000,000** at Clause 40.5.3 of this Schedule 2 shall be replaced with **£3,000,000**
- 40.6.3. is equal to, exceeds or will exceed **£10,000,000** then the figure of **£5,000,000** at Clause 40.5.3 of this Schedule 2 shall be replaced with **£10,000,000** and the figure of one hundred and twenty five per cent (125%) at Clause 40.5.3 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%).

Consequential loss

40.7. Subject always to Clauses 40.2, 40.3, 40.4 (Unlimited liability) and Clause 40.7 of this Schedule 2 neither Party shall be liable to the other Party for:

- 40.7.1. any indirect, special or consequential loss;
- 40.7.2. loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

40.8. Notwithstanding Clause 40.7 but subject to Clause 40.5 the Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

40.8.1. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

40.8.2. any wasted expenditure or Contract Price;

40.8.3. the additional costs of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under the Contract;

40.8.4. any compensation or interest paid to a third party by the Authority; and

40.8.5. any fine, penalty or costs incurred by the Authority pursuant to Law any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

40.9. Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.

40.10. Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the performance by the Contractor of any and all of its obligations under the Contract and in respect of any Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor.

41. INSURANCE

41.1. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

41.2. The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.

41.3. Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.

- 41.4.** The Contractor shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Contractor pursuant to this Clause 41 (Insurance) of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 41.5.** If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 41.6.** The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 40 (Indemnity and Limitation of Liability) of this Schedule 2.

42. TERMINATION

- 42.1.** In the case of a breach of any of the terms of this Contract by the Contractor that is capable of remedy (including, without limitation any failure to pay any sums due under this Contract), the Authority may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Contractor the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Contractor ("**Remedial Proposal**") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Contractor in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Contractor to:
- 42.1.1. put forward and agree a Remedial Proposal with the Authority in relation to the relevant Default or breach within a period of ten (10) Working Days (or such other period as the Authority may agree in writing) from the deemed date of receipt of the Breach Notice;
 - 42.1.2. comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be ten (10) days unless otherwise agreed between the Parties); and/or
 - 42.1.3. remedy the Default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 42.2.1(b) (Termination) of this Schedule 2, a material breach of this Contract by the Contractor not remedied in accordance with an agreed Remedial Proposal.

42.2. The Authority may terminate the Contract, or terminate the provision of any part of the Services, with immediate effect by serving a Termination Notice to the Contractor:

42.2.1. if the Contractor commits a material breach of any of the terms of this Contract which is:

(a) not capable of remedy; or

(b) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or

42.2.2. if the Contractor has been served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) Month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Contractor has remedied the breach in accordance with a Remedial Proposal). The twelve (12) Months rolling period is the twelve (12) Months immediately preceding the date of the third Breach Notice.

42.2.3. if the Contractor does not commence delivery of the Services by the Services Commencement Date;

42.2.4. if the Contractor, or any third party guaranteeing the obligations of the Contractor under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

- 42.2.5. if the Contractor purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 51 (Assignment, Novation and Sub-contracting) of this Schedule 2;
- 42.2.6. if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority; or
- 42.2.7. pursuant to and in accordance with Clause **Error! Reference source not found.** (Carbon Footprint / Net Zero Obligations) of Schedule 1, Clause 29.6 (Contractor Personnel), Clause **Error! Reference source not found.** (Intellectual Property Rights), Clause 46.5 (Conflict of Interest), Clause 48.7 (Force Majeure), Clause 53.10 (Confidential Information), Clause 57.2 (Official Secrets Acts and Finance Act), Clause 58.4 (Disruption) and Clause 59.5 (Complaints), of this Schedule 2;
- 42.2.8. where the warranty given by the Contractor pursuant to Clause 35 (Warranties) of this Schedule 2 is materially untrue;
- 42.2.9. where
- (a) the warranty given by the Contractor pursuant to Clause 35.2 of this Schedule 2 is materially untrue; or
 - (b) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 35.2.1 of this Schedule 2; or
 - (c) the Contractor fails to provide details of proposed mitigating factors required by Clause 35.2.2 of this Schedule 2 which in the reasonable opinion of the Authority, are acceptable; or
- 42.2.10. on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Regulations; or
- 42.2.11. if the Contractor commits a breach of the Anti-slavery Policy or the Authority's Anti-slavery Policy.
- 42.3.** If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Contractor and/or any third party guaranteeing the obligations of the Contractor under this Contract and/or any material Sub-contractor of the

Contractor when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Contractor or the entering into a Sub-contract by the Contractor, the following process shall apply:

- 42.3.1. the Authority may (but shall not be obliged to) give notice to the Contractor requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice; and
 - 42.3.2. a failure or refusal by the Contractor to provide the financial or other security and/or assurances requested in accordance with Clause 42.3 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Contractor and shall be referred to and resolved in accordance with the Dispute Resolution Procedure.
- 42.4.** Notwithstanding any other provision in the Contract, the Authority shall be entitled to terminate this Contract with immediate notice should any information supplied by the Contractor, contained in this Contract or obtained by the Authority (including but not limited to financial or other due diligence information provided by the Contractor or obtained by the Authority) be inaccurate, misleading and/or otherwise give rise to reasonable suspicion by the Authority of fraud.
- 42.5.** The Contractor may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Contractor under this Contract which in aggregate exceeds a quarterly payment and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Contractor, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 34.8 (Recovery of Sums Due) of this Schedule 2.

43. CONSEQUENCES OF EXPIRY OR EARLY TERMINATION OF THE CONTRACT

- 43.1.** Where the Authority terminates the Contract under Clause 42 (Termination) of this Schedule 2 and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 42 (Termination) of this Schedule 2 no further payments shall be made by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made

by the Authority), until the Authority has established the final cost of arranging an alternative supplier of the Services.

43.2. Save as otherwise expressly provided in the Contract:

43.2.1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

43.2.2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clause 34 (Price and Payment), Clause 36 (Intellectual Property), Clause 38 (Protection of Personal Data), Clause 39 (Records Retention and Right of Audit), Clause 40 (Indemnity and Limitation of Liability), Clause 41 (Insurance), Clause 43 (Consequences of Expiry or Early Termination of the Contract), Clause 44 (Recovery upon Expiry or Early Termination of the Contract), Clause 52 (Prevention of Fraud and Bribery), Clause 53 (Confidential Information), Clause 54 (Freedom of Information Act), Clause 57 (Official Secrets Acts and Finance Act), Clauses 63.2 to 63.4 (Waiver), Clause 63.5 (Cumulative Remedies) and Clauses 63.10 to 63.11 (Law and Jurisdiction) of Schedule 2.

44. RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CONTRACT

44.1. Upon expiry or earlier termination (for any reason) of this Contract, the Contractor shall at the request of the Authority and at the Contractor's cost:

44.1.1. immediately return to the Authority all Confidential Information, Personal Data, Authority Existing IPR and any New IPR in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services (but excluding copies of such Confidential Information, Personal Data or other information that the Contractor is required to retain pursuant to the Law or for regulatory purposes);

44.1.2. except where the retention of Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Personal Data and provide written confirmation to the Authority that the data has been destroyed;

44.1.3. immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under Clause 31 (Use of Authority Equipment) of this Schedule 2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- 44.1.4. vacate and procure that the Contractor Personnel vacate any premises of the Authority occupied for the purposes of providing the Services;
 - 44.1.5. return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);
 - 44.1.6. comply with its obligations under any agreed Exit Plan; and
 - 44.1.7. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any Replacement Contractor to conduct due diligence.
- 44.2.** If the Contractor fails to comply with Clause 44.1.1 and 44.1.2 of this Schedule 2, the Authority may recover possession of the items mentioned in those Clauses. The Contractor shall grant, and shall procure that any Sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Sub-contractors where any such items may be held.

45. DISPUTE RESOLUTION

- 45.1.** The Authority and the Contractor shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either notifying the other Party of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.
- 45.2.** Nothing in this dispute resolution procedure shall prevent the Authority or the Contractor from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 45.3.** If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 45.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 45.5 of this Schedule 2 unless:
- 45.3.1. the Authority considers that the dispute is not suitable for resolution by mediation; or
 - 45.3.2. the Contractor does not agree to mediation.
- 45.4.** The obligations of the Authority and the Contractor under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.

45.5. The procedure for mediation is as follows:

- 45.5.1. a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Authority and the Contractor or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
- 45.5.2. the Authority and the Contractor shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Authority and the Contractor may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- 45.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 45.5.4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 45.5.5. failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 45.5.6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

46. CONFLICT OF INTEREST

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

Contractor shall comply with the provision of this Clause 46 (Conflict of Interest) in order to assist the Authority with its compliance with its obligations under that PPN.

- 46.2.** The Contractor shall take appropriate steps to ensure that neither the Contractor nor the Contractor Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interest of the Contractor or the Contractor Personnel and the duties owed to the Authority and other Contracting Authorities under the provisions of the Contract.
- 46.3.** The Contractor shall promptly notify and provide full particulars to the Authority or the relevant other Contracting Authority if such conflict arises or may reasonably be foreseen as arising.
- 46.4.** Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the Term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 46 (Conflict of Interest).
- 46.5.** The Authority reserves the right to terminate the Contract with immediate effect by giving written notice to the Contractor and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The action of the Authority pursuant to this Clause 46 (Conflict of Interest) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

47. CHANGE MANAGEMENT

- 47.1.** The Contractor acknowledges to the Authority that the Authority’s requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable Variation or addition to the Specification and Tender, as may be requested by the Authority from time to time.
- 47.2.** Any change to the Services or other Variation to this Contract shall only be binding once it has been agreed either:
 - 47.2.1. in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or
 - 47.2.2. if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

Change in Law

47.3. The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:

47.3.1. a General Change in Law; or

47.3.2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

47.4. If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 47.3.2 of this Schedule 2), the Contractor shall:

47.4.1. notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(a) whether any Variation is required to the Services, the Contract Price or this Contract; and

(b) whether any relief from compliance with the Contractor's obligations is required; and

47.4.2. provide the Authority with evidence:

(a) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

(b) as to how the Specific Change in Law has affected the cost of providing the Services; and

(c) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

47.5. Any Variation in the Contract Price or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause 47.3.2 of this Schedule 2) shall be implemented in accordance with the Clause 47.2 of this Schedule 2.

48. FORCE MAJEURE

48.1. Subject to the remaining provisions of this Clause 48 (Force Majeure) (and, in relation to the Contractor, subject to its compliance with its obligations in Clause 21 (Business Continuity and Disaster Recovery) of Schedule 1 and Schedule 14 (Business Continuity and Disaster Recovery Plan), if applicable), a Party may claim relief under this Clause 48 (Force Majeure) from liability

for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

48.2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

48.3. If the Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 48 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:

48.3.1. are capable of being mitigated, but the Contractor has failed to do so;

48.3.2. should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or

48.3.3. are the result of the Contractor's failure to comply with its BCDR Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the BCDR Plan).

48.4. Subject to Clause 48.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

48.5. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

48.6. Where, as a result of a Force Majeure Event:

48.6.1. an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 48.7; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
- 48.6.2. the Contractor fails to perform its obligations in accordance with this Contract:
 - (a) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 17 (Authority Step-In Rights) of Schedule 1 (if applicable) as a result of such failure; and
 - (b) the Contractor shall be entitled to receive payment of the Contract Price (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 48.7.** Either Party may terminate this Contract by issuing a Termination Notice to the other Party if a Force Majeure Event endures for a continuous period of ninety (90) days and this Contract shall terminate on the date specified in the Termination Notice.
- 48.8.** The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 48.9.** Relief from liability for the Affected Party under this Clause 48 (Force Majeure) shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 48.8.

49. EQUALITY AND DIVERSITY

- 49.1.** The Contractor shall:
 - 49.1.1. ensure that (a) it does not, whether as employer or as supplier of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure the Contractor Personnel do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 49.1.2. in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply

with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Contractor shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

- 49.1.3. impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Contractor by this Clause 49 (Equality and Diversity).
- 49.1.4. The Contractor shall meet reasonable requests by the Authority for information evidencing the Contractor’s compliance with the provisions of this Clause 49 (Equality and Diversity).

50. NOTICE

50.0. Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time.

50.1. A notice shall be treated as having been received:

- 50.1.1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 50.1.2. if sent by first class recorded delivery mail on a normal Working Day, at 9.00 am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00 am on the third Working Day subsequent to the day of posting; or
- 50.1.3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

51. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

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

- 51.2.** The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the Contract or any part thereof to:
- 51.2.1. any other body established by the Crown; or
 - 51.2.2. under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 51.2.3. any private sector body which substantially performs the functions of the Authority,
- and the Contractor shall, at the Authority’s request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 51 (Assignment, Novation and Sub-contracting).
- 51.3.** A change in the legal status of the Authority shall not, subject to Clause 51.2 of this Schedule 2 affect the validity of the Contract and the Contract shall be binding on any successor body to the Authority.
- 51.4.** If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Contract to a private sector body in accordance with Clause 51.2 of this Schedule 2 (the “**Transferee**” in the rest of this Clause) the right of termination of the Authority in Clause 42.2.4 (Termination) of this Schedule 2 shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 42.2.4 (Termination) of this Schedule 2 were references to the Transferee).
- 51.5.** The Contractor shall exercise due skill and care in the selection of any Sub-contractors to ensure that the Contractor is able to:
- 51.5.1. manage any Sub-contractors in accordance with Good Industry Practice;
 - 51.5.2. comply with its obligations under the Contract in the provision of the Services; and
 - 51.5.3. assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to the Contract.
- 51.6.** Prior to sub-contracting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:
- 51.6.1. the proposed Sub-contractor’s name, registered office and company registration number; and
 - 51.6.2. the scope of any Services to be provided by the proposed Sub-contractor.

51.7. If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 51.6 of this Schedule 2, the Contractor shall also provide:

51.7.1. a copy of the proposed Sub-contract; and

51.7.2. any further information reasonably requested by the Authority.

51.8. The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 51.6 of this Schedule 2 (or, if later, receipt of any further information requested pursuant to Clause 51.7 of this Schedule 2), object to the appointment of the relevant Sub-contractor if they consider that:

51.8.1. the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under the Contract;

51.8.2. the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;

51.8.3. the proposed Sub-contractor employs unfit persons; and/or

51.8.4. the proposed Sub-contractor should be excluded in accordance with Clause 51.14 of this Schedule 2,

in which case, the Contractor shall not proceed with the proposed appointment.

51.9. If the Authority has not notified the Contractor that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:

51.9.1. the Contractor's notice issued pursuant to Clause 51.6 of this Schedule 2; and

51.9.2. any further information requested by the Authority pursuant to Clause 51.7 of this Schedule 2,

the Contractor may proceed with the proposed appointment.

51.10. The Contractor shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

51.10.1. requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

- 51.10.2. that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 51.10.1 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 51.10.3 of this Schedule 2 after a reasonable time has passed;
- 51.10.3. requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- 51.10.4. giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 51.10.5. requiring the Sub-contractor to include a clause to the same effect as this Clause 51.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 51.11.** The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed.
- 51.12.** Notwithstanding any provision of Clause 53 (Confidential Information) of this Schedule 2 and Clause 62 (Publicity) of this Schedule 2, if the Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or, where Clauses **Error! Reference source not found.** to **Error! Reference source not found.** (Supply Chain Visibility) of Schedule 1 (Key Provisions) apply, that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within 60 days after the day on which the Contractor receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 51.13.** Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 51 (Assignment, Novation and Sub-contracting), the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
- 51.14.** The Authority may require the Contractor to terminate a Sub-contract where:
- 51.14.1. the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 42 (Termination) of this Schedule 2;
- 51.14.2. the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority,

regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

51.14.3. the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

51.14.4. the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 51.15.

51.15. Where the Authority considers whether there are grounds for exclusion of a Sub-contractor under Regulation 57 of the Regulations, then:

51.15.1. if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;

51.15.2. if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not appoint the Sub-contractor and the Contractor shall comply with such a requirement.

52. PREVENTION OF FRAUD AND BRIBERY

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

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

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

52.2. The Contractor shall not during the Term:

52.2.1. commit a Prohibited Act; and/or

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

52.3. The Contractor shall during the Term:

- 52.3.1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 52.3.2. keep appropriate records of its compliance with its obligations under Clause 52.3.1 (Prevention of Fraud and Bribery) of this Schedule 2 and make such records available to the Authority on request;
 - 52.3.3. if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause of all persons associated with the Contractor or its Sub-contractors who are responsible for supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence as the Authority may reasonably request; and
 - 52.3.4. have, maintain and, where appropriate, enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 52.4.** The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 52.1 (Prevention of Fraud and Bribery) of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:
- 52.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 52.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 52.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 52.5.** If the Contractor makes a notification to the Authority pursuant to Clause 52.4 (Prevention of Fraud and Bribery) of this Schedule 2, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 39 (Records Retention and Right of Audit) of this Schedule 2.

52.6. If the Contractor breaches Clause 52.1 (Prevention of Fraud and Bribery) of this Schedule 2, the Authority may by notice:

52.6.1. require the Contractor to remove from the performance of the Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or

52.6.2. immediately terminate the Contract pursuant to Clause 42.2.1(a) (Termination) of this Schedule 2.

52.7. Any notice served by the Authority under Clause 52.6 of this Schedule 2 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

53. CONFIDENTIAL INFORMATION

53.1. For the purposes of this Clause 53 (Confidential Information), the term:

53.1.1. **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information; and

53.1.2. **"Recipient"** shall mean the Party which receives or obtains directly Confidential Information.

53.2. Except to the extent set out in this Clause 53 (Confidential Information) or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:

53.2.1. 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);

53.2.2. 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;

53.2.3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and

53.2.4. immediately notify the Disclosing Party if its suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

53.3. Clause 53.1 of this Schedule 2 shall not apply to the extent that:

- 53.3.1. Law requires such disclosure by the Party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
 - 53.3.2. 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;
 - 53.3.3. 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;
 - 53.3.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 53.3.5. it is independently developed without access to the other Party's Confidential Information.
- 53.4.** 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.
- 53.5.** 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.
- 53.6.** 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.
- 53.7.** 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.
- 53.8.** The Authority may disclose the Confidential Information of the Contractor:

- 53.8.1. on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- 53.8.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 53.8.3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 53.8.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 53.8.1 of this Schedule 2 including any benchmarking organisation for any purpose relating to or connected with the Contract;
- 53.8.5. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 53.8.6. 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 53 (Confidential Information).

- 53.9.** Nothing in this Clause 53 (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.
- 53.10.** Failure by the Contractor to comply with any of its obligations under this Clause 53 (Confidential Information) shall be an irremediable material breach of this Contract and the Authority shall be entitled to terminate the Contract pursuant to Clause 42.2.1(a) (Termination) of this Schedule 2.

54. FREEDOM OF INFORMATION ACT

- 54.1.** The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
 - 54.1.1. provide all necessary assistance and cooperation as reasonably requested by the Authority, at the Contractor's expense, to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;

- 54.1.2. transfer to the Authority all requests for information that it receives under the FOIA and the Environmental Information Regulations (“**Requests for Information**”) relating to the Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 54.1.3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Contractor’s possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority’s request for such Information; and
 - 54.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 54.2.** The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.
- 54.3.** The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 39 (Records Retention and Right of Audit) of this Schedule 2 and shall permit the Authority to inspect such records as the Authority requests from time to time.
- 54.4.** The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 39 (Records Retention and Right of Audit) of this Schedule 2.
- 55. TRANSPARENCY**
- 55.1.** The Contractor recognises that the Authority is subject to PPN 01/17: Update to Transparency Principles (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Contractor shall comply with the provision of this Clause **Error! Reference source not found.** (Transparency) in order to assist the Authority with its compliance with its obligations under that PPN.

55.2. The Parties agree and acknowledge that the content of this Contract is not Confidential Information, except for:

55.2.1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

55.2.2. Commercially Sensitive Information.

55.3. Notwithstanding any other provision of this Contract, the Contractor hereby gives consent for the Authority to publish to the general public this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

55.4. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

56. SUSTAINABILITY

56.1. The HM Government published a Contractor Code of Conduct setting out the standards and behaviours expected of suppliers who work with government shall apply for the purposes of this Contract

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier Code of Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)) (the “Code”). In addition to the obligations under the Contract, the Authority expects the Contractor and any Sub-contractors to meet the standards set out in that Code.

56.2. The Contractor acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Authority expects that the Contractor and its Sub-contractors will comply with such corporate social responsibility requirements as the Authority may notify to the Contractor from time to time.

56.3. The Contractor shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 56 (Sustainability) within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

Equality and Accessibility

56.4. The Contractor shall support the Authority in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

- 56.4.1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
 - 56.4.2. advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.
- 56.5.** In delivering the Services, the Contractor shall comply with the Authority's equality, diversity and inclusion requirements, to be provided to the Contractor by the Authority.
- 56.6.** The Contractor shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

Employment Law

- 56.7.** The Contractor must perform its obligations meeting the requirements of all applicable Law regarding employment.

Modern Slavery

- 56.8.** The Contractor:
- 56.8.1. shall, and shall procure that each of its Sub-contractors shall, comply with the Modern Slavery Act 2015;
 - 56.8.2. shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour or any practice that is considered to be an indicator of forced labour as defined by the International Labour Organisation;
 - 56.8.3. shall not require any Contractor Personnel or Sub-contractor staff to lodge deposits or identify papers with the employer and shall be free to leave their employer after reasonable notice;
 - 56.8.4. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
 - 56.8.5. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.

- 56.8.6. shall make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
 - 56.8.7. shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
 - 56.8.8. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
 - 56.8.9. Not in use
 - 56.8.10. shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;
 - 56.8.11. shall not use or allow child or slave labour to be used by its Sub-contractors; and
 - 56.8.12. shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Authority and Modern Slavery Helpline. .
- 56.9.** 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 and if Key Provision 20 applies, as a result of any breach of the Authority’s Anti-slavery Policy.

Environmental Requirements

- 56.10.** The Contractor shall comply in all material respects with all applicable environmental laws, permits and regulations in force in relation to the Contract.
- 56.11.** Not in use
- 56.12.** The Contractor shall meet the applicable Government Buying Standards applicable to services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 56.13.** The Contractor must have a documented management system and controls in place to manage the environmental impacts of delivering the Services.
- 56.14.** The Contractor shall ensure that any Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.

56.15. In delivering the Services, the Contractor must comply with the Authority's sustainability requirements, to be provided to the Contractor by the Authority.

56.16. In performing its obligations under the Contract, the Contractor shall to the reasonable satisfaction of the Authority:

56.16.1. avoid consumable single use items (including packaging) unless otherwise agreed with the Authority, and unless the use is primarily related to the management of the Contractor's own facilities or internal operations as opposed to the provision of Services;

56.16.2. [demonstrate that the whole life cycle impacts (including end of use) associated with the Services that extend beyond direct operations into that of the supply chain have been considered and reduced;

56.16.3. minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;

56.16.4. demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;

56.16.5. enhance the natural environment and connecting communities with the environment; and

56.16.6. achieve continuous improvement in environmental (and social) performance.

56.17. The Contractor shall inform the Authority within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.

Sustainability

56.18. The Contractor shall:

56.18.1. comply with all applicable Government Buying Standards which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>;

56.18.2. perform its obligations under the Contract in a way that:

(a) conserves energy, water, wood, paper and other resources;

- (b) reduces waste and avoids the use of ozone depleting substances; and
 - (c) minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and
- 56.18.3. use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Contractor shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.

56.19. Not in use

57. OFFICIAL SECRETS ACTS AND FINANCE ACT

57.1. The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:

57.1.1. the Official Secrets Acts 1911 to 1989; and

57.1.2. section 182 of the Finance Act 1989.

57.2. The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor or any of the Contractor Personnel do not comply with Clause 57.1 (Official Secrets Acts and Finance Act) of this Schedule 2.

58. DISRUPTION

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

58.2. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

58.3. In the event of industrial action by the Contractor Personnel, the Contractor shall prepare proposals for the continuation of its obligations under the Contract for the Authority to approve.

58.4. If the Contractor's proposals referred to in Clause 58.3 (Disruption) of this Schedule 2 are considered insufficient or unacceptable by the Authority, acting reasonably, then the Contract may be terminated with immediate effect by the Authority by written notice.

58.5. If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

59. COMPLAINTS

59.1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 42 (Termination) of this Schedule 2.

59.2. Should the Authority be of the view, acting reasonably, that the Contractor can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step-In Rights if the Key Provisions refer to the Authority having such rights under this Contract.

59.3. Without prejudice to its right under Clause 34.8 (Recovery of Sums Due) of this Schedule 2, the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

59.4. If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

59.5. In the event that:

59.5.1. the Contractor fails to comply with Clause 59.4 (Complaints) of this Schedule 2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

59.5.2. the Contractor persistently fails to comply with Clause 59.4 (Complaints) of this Schedule 2;

the Authority may terminate the Contract with immediate effect by giving written notice.

60. NON-SOLICITATION

- 60.1.** Except in respect of any transfer of staff pursuant to Schedule 10 (Staff Transfer), neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Term or for a further period of twelve (12) Months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of the other Party.
- 60.2.** If either the Contractor or the Authority commits any breach of Clause 60.1 (Non-Solicitation) of this Schedule 2 the breaching Party shall, on demand, pay to the claiming Party a sum equal to one year's basic salary or the annual fee that was payable by the claiming Party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming Party in replacing such person.

61. HEALTH AND SAFETY

- 61.1.** The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws and codes of practice relating to health and safety, which may apply to Contractor Personnel in the performance of the Services.
- 61.2.** The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 61.3.** The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises of the Authority and which may affect the Contractor in the performance of the Services.
- 61.4.** The Contractor shall inform all Contractor Personnel engaged in the provision of Services at the Premises of the Authority of all known health and safety hazards and shall instruct those Contractor Personnel in connection with any necessary safety measures.
- 61.5.** Whilst on the Premises of the Authority, the Contractor shall comply, and shall procure that the Contractor Personnel comply, with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 61.6.** The Contractor shall notify the Authority Representative immediately in the event of any incident occurring in the performance of the Services on the Premises of the Authority where that

incident causes any personal injury or any damage to property which could give rise to personal injury.

- 61.7.** The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

62. PUBLICITY

- 62.1.** The Contractor shall not and shall procure that its Sub-contractors shall not:

62.1.1. make any press announcements or publicise the Contract in any way; or

62.1.2. use the Authority's name or brand in any promotion or marketing or announcement, without the prior written consent of the Authority.

- 62.2.** The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

- 62.3.** The provisions of this Clause 62 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

63. GENERAL

Relationship of the Parties

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

Waiver

- 63.2.** The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 63.3.** No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 50 (Notice) of this Schedule 2.
- 63.4.** A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

Cumulative Remedies

- 63.5.** Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

Severability

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

Entire agreement

- 63.7.** The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause 63.563.7 (Entire Agreement) shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

Further assurances

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

The Contracts (Rights of Third Parties) Act 1999

- 63.9.** A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause 63.9 (The Contracts (Rights of Third Parties) Act 1999) does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

Law and Jurisdiction

- 63.10.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

63.11. Subject to Clause 45 (Dispute Resolution) of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

SCHEDULE 3 DEFINITIONS AND INTERPRETATION

64. DEFINITIONS

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

“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
“Anti-slavery Policy”	means the Contractor’s slavery and human trafficking policy, if any, as amended by notification to the Authority from time to time;
“Authority”	means the Secretary of State for Health acting as part of the Crown;
“Authority’s Anti-slavery Policy”	means the Authority’s slavery and human trafficking policy, if any, as amended by notification to the Contractor from time to time;
“Authority Data”	<p>means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ol style="list-style-type: none"> a. supplied to the Contractor by or on behalf of the Authority; or b. which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or c. any Personal Data for which the Authority is the Controller;

“Authority Existing IPR”	means any and all IPR that are owned by or licensed to the Authority, and where the Authority is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);
“Authority Representative”	means the person authorised to act for the Authority for the purposes of the Contract, being the person specified in the Key Provisions;
“Authority Third Party”	means any supplier to the Authority (other than the Contractor), which is notified to the Contractor from time to time and/or of which the Contractor should have been aware;
“BCDR Plan”	means the Contractor’s business continuity and disaster recovery plan prepared in accordance with Schedule 14 (Business continuity and disaster recovery plan) as amended from time to time
“Biometric Data”	means Personal Data resulting from specific technical Processing relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Contractor and its ability to supply the Services;
“Carbon Footprint”	means the amount of carbon dioxide equivalent emissions that will be released into the atmosphere as a result of the supply of the Services determined in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change.

“Carbon Reporting”	means reporting of an organisation’s greenhouse gas emissions and extraction to a standard not less than that required by the UK government’s Streamlined Energy and Carbon Reporting (SECR).
“Central Government Body”	<p>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:</p> <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 Control Process”	means the change control process, if any, referred to in the Key Provisions;
“Change in Law”	means any change in Law which impacts on the performance of the Services which comes into force after the Commencement Date;
“Commencement Date”	means the date of this Contract;
“Commercially Sensitive Information”	means the information listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;
“Comparable Supply”	means the supply of services to another customer of the Contractor that are the same or similar to any of the Services;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is

conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and Know-How of either Party and all Personal Data and sensitive Personal Data within the meaning of the GDPR. Confidential Information shall not include information which:

- a. was public knowledge at the time of disclosure (otherwise than by breach of Clause 53 (Confidential Information) of Schedule 2);
- b. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- d. is independently developed without access to the Confidential Information;

“Contract” means the form of contract at the front of this document and all Schedules attached to the form of contract;

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Order Form or Schedule 6 (Pricing) (as applicable) for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Clause 10 (Price Adjustment on Extension of Term) of Schedule 1, if applicable;

“Contract Target” the proportion of the Authority’s Net Zero Target which will be achieved under this Contract.

“Contract Year” means:

- a. a period of 12 Months commencing on the Services Commencement Date; or
- b. thereafter a period of 12 Months commencing on each anniversary of the Services Commencement Date;

	provided that the final Contract Year shall end on the expiry or termination of the Term;
“Contracting Authority”	means any contracting authority as defined in Regulation 2 of the Regulations;
“Contractor”	means the contractor named on the form of Contract on the second page;
“Contractor Existing IPR”	any and all IPR that are owned by or licensed to the Contractor and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise)
“Contractor Existing IPR Licence”	means a licence to be offered by the Contractor to the Contractor Existing IPR;
“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor engaged in the performance of the Contractor’s obligations under the Contract from time to time;
“Contractor Representative”	means the individual authorised to act for the Contractor for the purposes of the Contract, being the person specified in the Key Provisions;
“Contracts Finder”	means the facility provided by the Cabinet Office to advertise contract opportunities available at https://www.gov.uk/contracts-finder and any successor facility or website;
“Control”	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data”	take the meaning given in the GDPR;

Breach”, “Data Protection Officer”

“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Crown IPR”	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);
“Data Concerning Health”	means Personal Data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
“Data Loss Event”	any event that results, or may result, an unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Legislation”	means (i) the GDPR, (ii) Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and (iv) all applicable Law about the processing of Personal Data and privacy;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement;

- a. in the case of the Authority, of its employees, servants or agents; or
- b. in the case of the Contractor, of its Sub-contractors or any Contractor Personnel,
- c. in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

“DOTAS”	if applicable means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“End User”	means a party that is accessing the Services provided pursuant to this Contract (including the Authority where it is accessing services on its own account as a user);
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“Existing IPRs”	means any and all Intellectual Property Rights that are owned by or licensed to either Party and which are or

have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);

- “Exit Day”** shall have the meaning in the European Union (Withdrawal) Act 2018;
- “Exit Plan”** means the plan for the provisions of the Transitional Assistance Services in the event of the expiry or termination of the Contract, which is to be developed by the Parties pursuant to Clause 18 (Exit and Service Transfer) of Schedule 1;
- “Expiry Date”** means the date upon which the Contract shall end as specified in the Key Provisions;
- “FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- “Force Majeure Event”** any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractor’s supply chain or, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;
- “Force Majeure Notice”** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
- “Fraud”** means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act

	1967) or at common law in respect of fraudulent acts including acts of forgery;
“GDPR”	means the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
“General Anti-Abuse Rule”	if applicable, means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Greenhouse Gas”	means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons;
“Halifax Abuse Principle”	if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;

- “Impact Assessment”** an assessment of the impact of a Variation request, compelled in good faith, including:
- a. details of the impact of the proposed Variation on the Services and the Contractor’s ability to meet its other obligations under the Contract;
 - b. details of the cost of implementing the proposed Variation;
 - c. 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;
 - d. a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - e. such other information as the Authority may reasonably request in (or in response to) the Variation request.
- “Implementation Plan”** means the implementation plan, if any, referred to in the Key Provisions;
- “Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
- “Intellectual Property Rights” or “IPR(s)”** includes:
- a. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
 - b. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are

capable of being registered in any country or jurisdiction; and

- c. all other rights having equivalent or similar effect in any country or jurisdiction;

“Joint Controllers”	means where two or more Controllers jointly determine the purposes and means of Processing;
“Key Personnel”	means those persons named in Schedule 11 as being key personnel or such persons as shall be agreed in writing by the Authority from time to time;
“Key Provisions”	means the Key Provisions and Optional Key Provisions (as applicable) set out in Schedule 1;
“Know-How”	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party’s possession before the applicable Commencement Date;
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply including but not limited to the Modern Slavery Act 2015;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Month”	means calendar month;
“Native Trees”	those species of trees that are native to the United Kingdom since the last ice age and listed as such on the Forestry Commission Website;

“Net Zero Target” a net reduction of Greenhouse Gas emissions from all operations including value and supply chains to zero by a specified date so there is a balance between sources and sinks of Greenhouse Gases in a calendar year and for each subsequent year thereafter;

“New IPR” means:

- a. Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b. Intellectual Property Rights in or arising as a result of the performance of the Contractor’s obligations under the Contract and all updates and amendments to the same;

But shall not include the Contractor’s Existing IPR;

“New IPR Item” means a deliverable, document, product or other item within which New IPR subsists;

“Occasion of Tax Non-Compliance” means:

- a. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- b. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012

gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

- “Open Licence”** means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> and the Open Standards Principles documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles> ;
- “Open Licence Publication Material”** means items created pursuant to the Contract which the Authority may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
- “Optional Services”** means the services described as such in Schedule 4 (Specification), if any, which are to be provided by the Contractor if required by the Authority in accordance with Clause 10 (Optional Services) of the Key Provisions;
- “Party”** means a party to the Contract;
- “Premises”** means, where applicable, the location where the Services are to be supplied, as set out in the Schedule 4 (Specification);
- “Processing”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- “Processor Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

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

“Prohibited Act” means:

- a. to directly or indirectly offer, promise or give any person working or engaged by a Contracting Authority and/or the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- b. committing any offence:
 - i) under the Bribery Act 2010;
 - ii) under legislation creating offences concerning Fraud; or
 - iii) at common level concerning Fraud; or
- c. committing (or attempting or conspiring to commit) Fraud;

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

“Pseudonymising”	means the Processing of Personal Data in such a manner that the Personal Data can no longer be attributed to a specific Data Subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the Personal Data are not attributed to an identified or identifiable natural person;
“Public Sector Body”	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
“Purchase Order”	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 4 (Specification) and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;
“Regulations”	means the Public Contracts Regulations 2015 as amended from time to time;
“Regulatory Bodies”	means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract and “Regulatory Body” shall be construed accordingly;
“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority”	if applicable, means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;
“Relevant Transfer”	shall have the meaning ascribed in Schedule 10 (Staff Transfer);
“Replacement Contractor”	means any third party contractor of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;
“Replacement Services”	means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are provided by the Authority itself or by any Replacement Contractor;
“Security Policy”	means the HMG Security Policy Framework (April 2014) available at https://www.gov.uk/government/publications/security-policy-framework , as amended by notification to the Contractor from time to time;
“Services”	means the services to be supplied as specified in Schedule 4 (Specification);
“Services Commencement Date”	means the services commencement date, if any, referred to in the Clause 9 (Services Commencement Date) of Schedule 1. If Clause 9 (Services Commencement Date) of Schedule 1 is not applicable, references in the Contract to the Services Commencement Date shall refer to the Commencement Date;
“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises (http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en) defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Specification”	means the Specification set out in the Order Form or Schedule 4 (Specification), as applicable.
“Step-In Rights”	means the step-in rights, if any, referred to in the Key Provisions;
“Sub-contract”	means the Contractor’s contract with a Sub-contractor whereby that Sub-contractor agrees to provide to the Contractor the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services;
“Sub-contractor”	means any person appointed by the Contractor to carry out any and/or all of the Contractor’s obligations under the Contract;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;
“Tender”	means the tender submitted by the Contractor to the Authority and annexed to Schedule 5 (Tender);
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means any notice to terminate this Contract which is given by either Party in accordance with the provisions of the Contract;
“Termination Period”	means the period specified in the Termination Notice during which period the Authority may require the Contractor to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Term (as extended by Clause 32.2 (Term) of Schedule 2) by more than six (6) Months;

"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Contractor for the purpose of providing the Services;
"Third Party IPR Licence"	means a licence to the Third Party IPR;
"Transferring Authority Employees"	shall have the meaning ascribed in Schedule 10 (Staff Transfer);
"Transferring Former Contractor Employees"	shall have the meaning ascribed in Schedule 10 (Staff Transfer);
"Transitional Assistance Service Charges"	means the charges, if any, payable by the Authority to the Contractor for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 6;
"Transitional Assistance Services"	means the services to be provided by the Contractor to the Authority pursuant to Clause 18 (Exit and Service Transfer) of Schedule 1 in order to facilitate the transfer of the Services to the Authority or a Replacement Contractor;
"Unconnected Sub-contract"	means any contract or agreement which is not a Sub-contract and is between the Contractor and a third party (which is not an Affiliate of the Contractor) and is a qualifying contract under regulation 6 of the Reporting on Payment Practices and Performance Regulations 2017
"Unconnected Sub-contractor"	means any third party with whom the Contractor enters into an Unconnected Sub-contract
"Variation"	means any variation to this Contract;
"Variation Form"	means the form set out in Schedule 9 (Variation Form);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Voluntary, Community and Social Enterprise" or "VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

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

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

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

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

64.2.2. words importing the masculine include the feminine and the neuter;

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

64.2.4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

64.2.5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

64.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

64.2.7. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

64.3. Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

64.4. Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (**“Receiving**

Party) may ask the Party that issued the Breach Notice (**“Issuing Party”**) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

64.5. In entering into this Contract the Authority is acting as part of the Crown.

64.6. Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):

64.6.1. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (**“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

64.6.2. any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

SCHEDULE 4 SPECIFICATION

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SPECIFICATIONS

Mental Health Act Approval Panel Function

Date: 19/08/2024



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1. INTRODUCTION

- 1.1. The Department of Health and Social Care (DHSC) is the Government Department responsible for the National Health Service, public health and adult social care in England.
- 1.2. Under the Mental Health Act, the Secretary of State for Health and Social Care is responsible for the approval of Section 12 doctors and Approved Clinicians, roles with specific responsibilities under the Act relating to the assessment for detention and to the treatment of patients. It is unlawful for those duties reserved to these roles to be performed by people who are not approved.
- 1.3. The approval function is currently delegated to four suppliers that cover four



geographical areas in England. The role of the four suppliers is to manage the application and approvals process of Section 12 Doctors and Approved Clinicians on behalf of the Secretary of State under section 12ZA of the Act.

2. PURPOSE

- 2.1. The purpose of this tender exercise is to appoint qualified and competent suppliers to manage the Mental Health Act approvals functions, specifically the management of the two types of approval needed for clinicians to work under the Mental Health Act as :
- i. Section 12 Doctor, and
 - ii. Approved Clinician.

3. OVERVIEW OF REQUIREMENT

- 3.1. To establish four regional panels of experts which will work in accordance with statutory and other instructions issued by the Secretary of State (for example the 2015 Instructions under section 12ZA of the Mental Health Act) with respect to the exercise of the Approval functions. [Mental Health Act: exercise of approval instructions 2015 - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42424/Mental_Health_Act_exercise_of_approval_instructions_2015.pdf)
- 3.2. To assess applications for Approved Clinicians or Section 12 Doctors against set national criteria to determine whether each individual applicant has the necessary experience, qualifications, and competency; have attended a recognised training course; and have appropriate references.
- 3.3. To maintain a panel of experts to assess the evidence presented by applicants.
- 3.4. To maintain a record of approval decisions (approval dates and any conditions or reason for declining) in an online database, managed by NHSBSA, which is available to professionals and those services that may need to confirm or identify a clinician holds appropriate approval under the Act. The database lists all those who have approval as a section 12 doctor or AC and must be kept up to date.
- 3.5. To assess providers of initial and refresher training courses against set national standards, approval to be given annually.
- 3.6. To record whether approved doctors have completed initial and annual refresher medical assessor Deprivation of Liberty Safeguards training.
- 3.7. Attend quarterly meetings with the DHSC Mental Health Act Approvals Manager to ensure the service provided meets the necessary standards.



- 3.8. Attend two national meetings annually, chaired by DHSC, at which all the appointed providers delivering the approval function consider issues and practice.
- 3.9. To develop and maintain effective working relationships with employers of s12 doctors and Approved Clinicians in the area for which the panel is responsible, including maintaining an overview of their use of the Database.
- 3.10. To develop effective working relationships with local authority Approved Mental Health Professional networks including encouraging their use of the database as end users.
- 3.11. To provide consistent expert advice about the approvals process to s12 doctors and Approved Clinicians and applicants for approval.
- 3.12. To obtain Disclosure and Barring Service (DBS) checks from applicants where required by the Instructions.
- 3.13. To work with DHSC to input into discussions around the need for and potential specifications of any future digital platforms designed to help panels to process applications (if appropriate).

4. SCOPE OF REQUIREMENT

- 4.1. For each regional panel where they are awarded the contract the Contractor will enter into an agreement under s12 ZA of the MHA with the Secretary of State for the exercise of the approval functions, thus becoming an “approving body” within the meaning of the current instructions, which came into force on 5th January 2016 (‘the current Instructions’). The Contractor must exercise all elements of the Approvals Function itself and must not delegate the function to another organisation.
- 4.2. The Contractor must comply with the MHA, the MHA Code of Practice: and any such instructions as the Secretary of State may publish from time to time under section 12ZA(5) of the MHA (including the current instructions) with respect to the exercise of the Approval Functions within the meaning of the current Instructions.
- 4.3. For each area where it is awarded a contract, the Contractor will maintain or establish an internal Mental Health Act Approvals Panel (“the Panel”) to exercise the Approval functions
- 4.4. Geographical Panel Areas
([J38370 NHS England ICS England Map Web May22 v4](#))



- Panel 1: the area covered by NHS England North East and Yorkshire and North West
- Panel 2: the area covered by NHS England Midlands and East of England
- Panel 3: London
- Panel 4: the area covered by NHS England South East and South West.

4.5. Total registered ACs and s12 doctors by region (March 2023)

Region	Psychiatrist Approved Clinicians	MPACS					TOTAL	Total ACs	S12 doctors (not incl. Psychiatrist)	TOTAL approved practitioners
		Psych-ologists	Nurses	OTs	Social Workers					
North	1,749	24	23	0	0	47	1,796	844	2,640	
Mindlands and East	1,825	8	13	0	2	23	1,848	879	2,725	
London	1,688	6	2	1	0	9	1,697	831	2,528	
South	1,554	11	13	0	2	26	1,580	701	2,281	

4.6. Current service figures:

	Midlands and East of England panel		South panel		North Panel		London	
	Total number of applications processed	portfolio applications processed	Total number of applications processed	portfolio applications processed	Total number of applications processed	portfolio applications processed	Total number of applications processed	portfolio applications processed
2021/22	855	15	781	27	793	23	733	6
2022/23	535	13	474	32	521	20	592	10
2023/24	752	19	552	40	644	20	572	16
Total	2142	47	1807	99	1958	63	1897	32

Total number of applications processed (AC & S12(2) Initial and Renewal Applications)
 Portfolio applications processed (included in the total)

The Recruitment of Panel Members

- 4.7. The recruitment of experts to sit on the Panel should draw from across the geography of the region and represent the range of psychiatric sub-specialties, and professions eligible to practice as Approved Clinicians.
- 4.8. All members of the Panel, that makes decisions about applications for s12 doctors and Approved Clinician approval, must be approved at the level of the approval they are making or higher.
- 4.9. The Contractor should take all reasonable steps to recruit at least one forensic medical examiner and one GP to the Panel.
- 4.10. The Contractor should take all reasonable steps to include at least one person from the following professions to the Panel; chartered psychology, mental health or learning disability nursing, occupational therapy and social work. All



non-medical members of the Panel should be either Approved Clinicians or nominated by their professional body as having sufficient knowledge and experience to assess applicants for Approved Clinician approval.

- 4.11. The contractor will have the freedom to determine the method and extent of rewarding panel members for their involvement in the evaluation process.

Appointment of Panel Chair

- 4.12. The person who is appointed the Chair will be a Consultant Psychiatrist who will ensure at all times that the Approval Functions. The Chair shall:

- a. be a registered medical practitioner;
- b. be approved under section 145(1) of the MHA;
- c. have a CPD Certificate of Good Standing;
- d. be revalidated in line with GMC requirements; and
- e. hold a contract with a provider of mental health services

- 4.13. The Vice-Chair must meet either the same criteria as the panel chair or be a non-medical approved clinician who holds a substantive contract with a provider of mental health services and is registered with the Health Professions Council or equivalent regulator.

Establishing appropriate governance and risk management arrangements for the work of the Panel

- 4.14. The Contractor must put in place appropriate governance and risk management processes to cover the work of each Panel for which the Contractor is responsible.

Operating the Panel

- 4.15. The Contractor must ensure that:
- o Minimum meetings: The Panel holds a minimum of three meetings each year throughout the duration of the contract.
 - o Thorough and Timely Consideration: During these meetings, the Panel is required to consider the following thoroughly and promptly:



- all applications for s12(2) approval.
 - all applications for Approved Clinician approval; and
 - renewal of those approvals
- Evaluation of Applications: The contractor must carefully assess each application and consider the supporting documents to determine whether to approve or refuse it. The decision-making process should be based on how well each applicant meets or fails to meet the criteria outlined in the application instructions.
 - Notification of Decision: After reaching a decision, the contractor is required to promptly notify the applicants, providing clear reasons for the panel's decision. This ensures transparency and allows applicants to understand the basis for the outcome.
 - Imposition of Conditions: When necessary, the contractor should impose appropriate conditions on approvals. The contractor also has the responsibility to diligently follow up on these conditions. This includes actively monitoring compliance and progress against the requirements outlined in the conditions.
 - Suspension or Termination of Approvals: The contractor will exercise authority to suspend or end the approval of section 12 doctors and Approved Clinicians in specific circumstances as outlined in the application instructions.
- 4.16. Review of Panel Decisions: In situations where an applicant requests a review of their decision, it is the contractor's responsibility to undertake a thorough review process. This review aims to carefully assess the decision made and address any concerns or issues raised by the applicant. The review process must comply with the requirements set out in heading 'Review of Panel Decisions'.

Review of Panel decisions

- 4.17. It is the responsibility of the Panel to provide written notification, including reasons, to applicants regarding the outcome of their application. These decisions include:
- Non-approval of an application: If the Panel decides not to approve an applicant after careful consideration of their application, the Panel must notify the applicant in writing. The notification will include clear reasons explaining the decision and providing the applicant with a comprehensive understanding of the factors considered.; or
 - Imposition or Variation of Discretionary Conditions: In cases where the Panel determines that it is necessary to impose or modify discretionary



conditions to which an approval is subject, the Panel is obliged to notify the applicant in writing. This notification will include the reasons behind the decision, ensuring transparency and providing the applicant with a clear understanding of the conditions and their rationale.

- 4.18. The Contractor must put in place a review procedure which allows a person to seek a review of a decision of the Panel. The review procedure must be available to all applicants. As part of the contractor's review procedure, the applicant must submit a written request to the Panel within 14 days of the date of the Panel's decision. This request should clearly specify the decision that the applicant seeks to have reviewed. In the written request, the applicant must include any representations or additional information they wish the Panel to consider during the review process. This would provide the applicant with an opportunity to present their case and provide any relevant details or supporting evidence that may impact the review outcome.
- 4.19. The Panel is required to review non-portfolio applications decisions within 21 days of receiving the review request. For portfolio applications the review period extends to 42 days, acknowledging the additional time needed to review these applications. This review process will be carried out internally, in accordance with the Panel's established internal review procedures. The decision resulting from this review is referred to as the "review decision". Within seven days of reaching the review decision, the Panel must provide written notification to the person who requested the review. This notification includes the reasons behind the review decision, ensuring transparency and providing the person with a clear understanding of the outcome.
- 4.20. In the event that the person is not satisfied with the review decision, the Panel has the responsibility to inform the Secretary of State's representative (refer to the 'Authority Representatives' in the contract). This notification triggers an additional seven-day period during which the applicant can make any final representations.
- 4.21. The Secretary of State's representative will be responsible for arranging a meeting within one month of receiving the final representation from the person who requested the review. This meeting involves the Chair or a nominated Vice Chair from each of the panels. During this meeting, the review request and any additional representations from the person are thoroughly discussed and considered. The decision that arises from this process is referred to as the "national decision." It signifies the final decision in the applicant's appeal



process.

Administration of the Panel

4.22. The Contractor must:

- employ a suitable number of suitably qualified and experienced staff to carry out duties under the contract, including a Contract Manager, all of whom should have sufficient understanding of the Approvals function and of the Data Protection Act to administer the work of the Panel and provide advice for new applicants and those seeking re-approval.
- develop effective working relationships with the employers of s12 doctors and Approved Clinicians in their area.
- develop effective working relationships with local authority approved mental health professional networks.
- correspond with regulatory authorities in a timely and accurate way.
- ensure that the Panel processes applications for approval in an accurate and timely way.
- comply with the MHA and any statutory instructions issued under s.12ZA(5) of the MHA issued by the Secretary of State.
- use the standard document set.
- obtain DBS checks as required by the Instructions. [Mental Health Act: exercise of approval instructions 2015 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- audit the accuracy of records held on the Database (as explained above, a national database of s12 doctors and Approved Clinicians) and the process used by the Panel to consider applications.
- maintain records as part of the national s12 doctors/AC database. hosted by NHSBSA. The database lists all those who have approval as a section 12 doctor or AC and must be kept up to date.
- scan completed approvals and rejected applications and attach them to the Database or secure drives in the cloud or office. All records should be clearly legible and include the information required in the Instructions to be provided to the Panels for approval to be given
- encourage end users of the Database (providers of mental health services, police, courts and Approved Mental Health Professionals) in the Panel's geographical area to use the Database for legal and HR checks
- work with existing training providers to ensure sufficient initial and refresher courses for s12 doctors and Approved Clinicians are available for applicants in



the Panel's area

- ensure annually that all training providers for s12 doctors and Approved Clinicians in the Panel's geographical area:
 - comply with the curriculum agreed by the National Reference Group
 - include appropriate information about the approvals process used by the Panel
 - use the feedback forms agreed by the National Reference Group

Training for Approved Clinicians and section 12 doctors

4.23. New Panels will be given a list of training providers in their area who have been approved by the existing Panels. Training is expected to adhere to agreed national guidelines and Panels must re-approve training providers within the first 12 months of the contract and in each subsequent year of the contract.

4.24. Payment for the training will be the responsibility of either the employers or the individual themselves.

Types of training:

- Initial s12 doctor training (2 days)
- Refresher training for approved s12 doctors (1 day)
- Initial Approved Clinician training
- Refresher training for Approved Clinicians

5. CONTINUOUS IMPROVEMENTS

5.1. The contractor must, throughout the Contract Period, identify new or potential improvements to the provision of the service with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services to the Authority.

5.2. When the contractor has identified new or potential improvements to deliver the service, that could have a significant impact on service delivery, such as major structural changes to the team, or the implementation of new It systems, it will present an improvement plan to the Authority, who will evaluate the proposal and communicate the contractor its approval or rejection of the proposed improvement plan. The contractor must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The contractor shall provide any further information as requested.

5.3. Improvements can also be instigated by the Authority, and this could include,



but not be limited new application processes, implementation of a new platform to manage the application process and customer support services.

- 5.4. Where the Authority instigate a service improvement as set out in paragraph 5.3, the Contractor shall use all reasonable endeavours to agree and implement such new improvement in accordance with the instructions of the Authority.
- 5.5. If the Authority wishes to incorporate any improvement into the contract, it will request a Variation in accordance with the Variation Procedure.

6. DATA BASE

- 6.1. The contractor will be responsible for including the approved S12 doctors or AC into the Mental Health Approval data base.
- 6.2. What does the Database do? It records who is approved to act as a s12 doctor or an Approved Clinician and whether they are willing to undertake work out of hours
- 6.3. Who uses the Database? Within Mental Health Trusts and private providers, staff responsible for pay and medical staffing often have access to the Database. Approved Mental Health Professionals, the police and local authorities also have access to the Database to ensure their organisations comply with the MHA.
- 6.4. Who manage the Database? Database is provided by the Department of Health and Social Care and NHSBSA with NHS BSA having responsibility for the operational management of the database. What support is available? Training for Panel administrators will be provided by NHS BSA. A manual for end users will also be available.

7. CONTRACT MANAGEMENT ARRANGEMENTS

- 7.1. The Contractor must appoint a Contract Manager to oversee the work of the panel and liaise with the DHSC Mental Health Act Approvals Manager. The manager will be the primary point of contact between the Contractor and the Authority and shall be responsible for managing the relationship with the Authority which shall include:
 - Contract administration
 - Provision of management information



- o Attending contract review meetings
- o Resolution of complaints and queries
- o Service planning, monitoring and continuous improvement.
- o Escalating any issues that cannot be resolved between the Supplier and the Authority.

7.2. Quarterly reviews: The Supplier contract management contacts, DHSC designated policy personnel and commercial directorate, where required, will meet at the end of every financial year quarter. Quarterly contract management will focus to formally performance review KPIs, report, payments, risks and any other ad hoc issues raised by the parties.

8. INFORMATION PROVISION

8.1. The Contractor will be required to submit quarterly reports covering as a minimum the following information:

- activity statistics, including as a minimum information on how many applications have been received, how many reviewed, how many approved, and how many rejected, as well as overall numbers of registered ACs and s12 doctors, split by profession
- bidders are invited to propose additional suitable Key Performance Indicators (KPI's).
- co-ordination of training including annual approval of training courses
- any complaints from applicants or organisations
- a list of members of the Panel and their employers; and
- confirmation that end users of the Database have been audited and rights to access removed where appropriate

8.2. The contractor will be required to submit an annual report that cover information and data for the whole preceding year by 1st June.

9. SERVICE KPIs

9.1. The Supplier's performance will be monitored quarterly against relevant quality outcomes indicators. The following table sets out various such indicators:

Key Indicators=Milestones	Performance (=Target)	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy =Remedial action
Completion reports	100%	>85% <100%	<85% >75%	<75%	



Data breaches reported within maximum of 10 hours of the contractor being aware of the breach	100%	>85% <100%	<85% >75%	<75%
Complaints received by applicants	0	>0 <5	≥5 <10	<10%

10. SOCIAL VALUE KPIs

- 10.1. The COVID-19 pandemic has exacerbated existing economic and social challenges and created many new ones. Social value provides additional benefits which can aid the recovery of local communities and economies, especially through employment, re-training and return to work opportunities, community support, developing new ways of working and supporting the health of those affected by the virus.
- 10.2. The DHSC follows the Social Value model created by the Government ([Social Value Act: information and resources - GOV.UK \(www.gov.uk\)](http://www.gov.uk) ; [Social-Value-Model-Edn-1.1-3-Dec-20.pdf \(publishing.service.gov.uk\)](http://publishing.service.gov.uk) and that includes 5 themes and 8 policy outcomes which flow from these themes, as follows:
 - Theme 1 COVID-19 recovery: Help local communities to manage and recover from the impact of COVID-19
 - Theme 2 Tackling economic inequality: Create new businesses, new jobs and new skills; Increase supply chain resilience and capacity
 - Theme 3 Fighting climate change: Effective stewardship of the environment
 - Theme 4 Equal opportunity: Reduce the disability employment gap; Tackle workforce inequality
 - Theme 5 Wellbeing: Improve health and wellbeing; Improve community cohesion
- 10.3. This contract will support theme 4 Equal Opportunities; Outcome – Tackle workforce inequality.MAC 6.1: Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce.
- 10.4. The Supplier will develop and maintain a plan throughout the life of the contract detailing how the Supplier will contribute to the overall achievement of our Social Value priorities. The Supplier must manage, measure and report on the delivery of Social Value throughout the life of contract. The supplier will report on quarterly basis against the metrics target proposed.
- 10.5. The Authority reserves the right to publish information on the delivery of Social Value through this contract and may request case studies for the purpose of increasing awareness and sharing knowledge.



- 10.6. The commitments and targets made in the contract will be monitored through the metrics on a quarterly basis. The Supplier acknowledges that the Authority may make reasonable adjustments to the SV KPIs and its measurements during the Term of the contract.
- 10.7. If the Supplier achieves <75% of the Social Value targets, the supplier will be requested to submit a Remedial Action Plan (Schedule Joint Schedule 10).

Key Performance Indicators=Milestones	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy= Remedial Action
Social Value commitments	100%	>85% <100%	<85% >75%	<75%

11. CONTRACT PERIOD

- 11.1. The contract will be in place for an initial period of two years (from 1st April 2025 to 31st March 2027). The Department of Health and Social Care may at its own discretion extend the initial term of the contract for additional periods of up to 3 years (2 +1). The total duration of the contract, including all extensions, cannot exceed 5 years.

12. CONTRACT BUDGET BY LOT AND PAYMENTS

- 12.1. The total value by lot is specified below:

Lot	Area	Year 1	Year 2	Year 3	Year 4	Year 5	Total Lot value
Lot 1	NHS England North East and Yorkshire and North West	£257,220	£270,000	£283,500	£297,700	£312,600	£1,421,020
Lot 2	NHS England Midlands and East of England	£279,700	£293,700	£308,400	£323,800	£340,000	£1,545,600
Lot 3	NHS London	£293,400	£308,000	£323,400	£339,600	£356,600	£1,621,000
Lot 4	NHS England South East and South West.	£251,600	£264,200	£277,400	£291,200	£305,800.00	£1,390,200.00
TOTAL COST		£1,081,920	£1,135,900	£1,192,700	£1,252,300	£1,315,000.00	£5,977,820.00

- 12.2. The estimated value of the contract for the extension period has been calculated considering a forecast 5% Consumer Prices Index (CPI). However,



it is important to note that the final determination of the extension and its corresponding value will be agreed upon by the Authority. The percentage change in the Office of National Statistics' Consumer Prices Index (CPI) will serve as the basis for determining the permissible increase (refer to the terms of contract). However, the supplier will be required to provide evidence of such an increase on the contract price.

- 12.3. Payment will be made quarterly/monthly in arrears and subject to the successful delivery of quarterly report.

13. FURTHER INFORMATION

What do s 12(2) doctors and Approved Clinicians do?

Some decisions taken under the MHA may only be taken by s 12(2) doctors. For example, section 12 of the MHA itself provides that an application for detention or guardianship under Part 2 of the MHA must be supported by two medical recommendations, one of which must be made by a doctor approved under section 12 of the MHA. Similarly, courts may not order the detention of a person in hospital under Part 3 of the MHA unless they have received evidence from at least one section 12 approved doctor. Section 12 doctors also have functions under certain other legislation. For example, a court may not impose a mental health treatment requirement as part of a suspended sentence order under the Criminal Justice Act 2003 without evidence from a section 12 doctor (see section 207(3)(a) of that Act).

Section 12 doctors also play a valuable role in conducting assessments for the purpose of proposed deprivation of liberty authorisations given under the Mental Capacity Act 2005 (MCA). Section 12 doctors may act as 'mental health assessors' to establish whether a person is suffering from mental disorder, and 'eligibility assessors' to assess whether the person is eligible to be the subject of a deprivation of liberty authorisation under the MCA. Deprivation of Liberty Safeguards training is required for these roles.

There are various functions under the MHA which are reserved (partly or wholly) to Approved Clinicians in relation to the renewal of detention or the administration of certain treatment without the patient's consent. An Approved Clinician with overall responsibility for a patient is known as the Responsible Clinician in that capacity. As Responsible Clinician, Approved Clinicians are the clinical lead for patients and exercise important decision-making powers in relation to detention, discharge and authorising leave of absence. Doctors who are Approved Clinicians are also deemed to be s 12(2) approved.



SCHEDULE 5 TENDER

- Technical Envelope and Social Value Envelope
- Supplier conflict of interest declaration

**SCHEDULE 7
CONTRACT MONITORING**

As set out in the Specifications.

SCHEDULE 8 COMMERCIALLY SENSITIVE INFORMATION

We will treat as commercially sensitive any information contained within the technical and commercial envelopes that could prejudice the commercial interests of any party to the contract. This includes, but is not limited to, proprietary methodologies, pricing structures, and any other data that, if disclosed, could undermine the competitive position of the parties involved.

**SCHEDULE 9
VARIATION FORM**

Contract Details		
This variation is between:	The Secretary of State for Health and Social Care acting as part of the Crown, at 39 Victoria Street, London SW1H 0EU ("the Authority") And ("the Contractor")	
Contract name:	("the Contract")	
Contract reference number:	C	
Details of Variation		
Variation initiated by:		
Variation number:		
Variation reference number:		
Date variation is raised:		
Proposed variation		
Reason for the variation:		
Financial variation:	Original Contract Value:	
	Additional cost due to variation:	
	New Contract value:	

SCHEDULE 10 STAFF TRANSFER

65. DEFINITIONS

65.1. In this Schedule, the following definitions shall apply:

- “Admission Contract”** The agreement to be entered into by which the Contractor agrees to participate in the Schemes as amended from time to time’
- “Contractor’s Final Contractor”** a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
- “Contractor’s Provisional Contractor Personnel List”** a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor
- “Eligible Employee”** any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;
- “Employee Liabilities”** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:
- a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
 - b. unfair, wrongful or constructive dismissal compensation;

- c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d. compensation for less favourable treatment of part-time workers or fixed term employees;
- e. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- f. employment claims whether in tort, contract or statute or otherwise;
- g. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Fair Employee(s)”

Deal those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

“Former Contractor”

a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

“New Fair Deal”		the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013;
“Notified contractor”	Sub-	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”		means HM Treasury Guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions” issued in June 1999 including the supplementary guidance “Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues” issued in June 2004;
“Relevant Transfer”		a transfer of employment to which the Employment Regulations applies;
“Relevant Date”	Transfer	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Replacement contractor”	Sub-	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);
“Schemes”		the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Contractor by the Minister for the Cabinet Office);

- “Service Transfer”** any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;
- “Service Transfer Date”** The date of a Service Transfer;
- “Staffing Information”** in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:
- a. their ages, dates of commencement of employment or engagement and gender;
 - b. details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
 - c. the identity of the employer or relevant contracting Party;
 - d. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
 - e. their wages, salaries and profit sharing arrangements as applicable;
 - f. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
 - g. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

- h. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- i. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- j. any other “employee liability information” as such term is defined in Regulation 11 of the Employment Regulations;

“Transferring Authority Employees” those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Contractor Employees” those employees of the Contractor and/or the Contractor’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date; and

“Transferring Former Contractor Employees” in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date.

66. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

NA - PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

NA - PART B: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

67. PROCEDURE IN THE EVENT OF TRANSFER

67.1. The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.

67.2. If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

67.2.1. the Contractor shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and

67.2.2. the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

67.3. If an offer referred to in Paragraph 67.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

67.4. If by the end of the fifteen (15) Working Day period specified in Paragraph 67.2.2:

67.4.1. no such offer of employment has been made;

67.4.2. such offer has been made but not accepted; or

67.4.3. the situation has not otherwise been resolved,

the Contractor and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

68. INDEMNITIES

68.1. Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 67.2 to 67.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 68.4, the Authority shall:

68.1.1. indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 67.2 made pursuant to the provisions of Paragraph 67.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

68.1.2. procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of Paragraph 67.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

68.2. If any such person as is described in Paragraph 67.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Paragraph 67.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

68.3. Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 68.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.

68.4. The indemnities in Paragraph 68.1:

- 68.4.1. shall not apply to:
- (a) any claim for:
- i. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - ii. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 68.4.2. shall apply only where the notification referred to in Paragraph 67.2.1 is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six (6) Months of the Services Commencement Date.

69. PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Contractor contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

PART D: EMPLOYMENT EXIT PROVISIONS

70. PRE-SERVICE TRANSFER OBLIGATIONS

- 70.0.** The Contractor agrees that within twenty (20) Working Days of the earliest of:
- 70.0.1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 70.0.2. receipt of the giving of notice of early termination of this Contract;
 - 70.0.3. the date which is twelve (12) Months before the end of the Term; and

70.0.4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Authority.

70.1. At least twenty (20) Working Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:

70.1.1. the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and

70.1.2. the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

70.2. The Authority shall be permitted to use and disclose information provided by the Contractor under Paragraphs **Error! Reference source not found.** and 70.1 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.

70.3. The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs **Error! Reference source not found.** and 70.1 shall be true and accurate in all material respects at the time of providing the information.

70.4. From the date of the earliest event referred to in Paragraph 1.1, the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

70.4.1. replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 70.4.2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
- 70.4.3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 70.4.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
- 70.4.5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 70.4.6. terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

70.5. During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- 70.5.1. the numbers of employees engaged in providing the Services;
- 70.5.2. the percentage of time spent by each employee engaged in providing the Services; and
- 70.5.3. a description of the nature of the work undertaken by each employee by location.

70.6. The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient

information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:

- 70.6.1. the most recent Month's copy pay slip data;
- 70.6.2. details of cumulative pay for tax and pension purposes;
- 70.6.3. details of cumulative tax paid;
- 70.6.4. tax code;
- 70.6.5. details of any voluntary deductions from pay; and
- 70.6.6. bank/building society account details for payroll purposes.

71. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 71.1.** The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 71.2.** The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor

shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.

71.3. Subject to Paragraph 71.4 the Contractor shall indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

71.3.1. any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

71.3.2. the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Contractor Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;

71.3.3. any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

71.3.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Authority and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 71.3.5. a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to and including the Service Transfer Date;
 - 71.3.6. any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 71.3.7. any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with Regulation 13(4) of the Employment Regulations.
- 71.4.** The indemnities in Paragraph 71.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 71.4.1. arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

- 71.4.2. arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 71.5.** If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 71.5.1. the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
- 71.5.2. the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 71.6.** If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 71.7.** If after the fifteen (15) Working Day period specified in Paragraph 71.5.2 has elapsed:
- 71.7.1. no such offer of employment has been made;
- 71.7.2. such offer has been made but not accepted; or
- 71.7.3. the situation has not otherwise been resolved
- the Authority shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 71.8.** Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 71.5 to 71.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of

Paragraph 71.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

71.9. The indemnity in Paragraph 71.8:

71.9.1. shall not apply to:

(a) any claim for:

- i. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- ii. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

71.9.2. shall apply only where the notification referred to in Paragraph 71.5.1 is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six (6) Months of the Service Transfer Date.

71.10. If any such person as is described in Paragraph 71.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 71.5 to 71.7, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

71.11. The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service

Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

71.11.1. the Contractor and/or any Sub-contractor; and

71.11.2. the Replacement Contractor and/or the Replacement Sub-contractor.

71.12. The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

71.13. Subject to Paragraph 2.14, the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:

71.13.1. any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;

71.13.2. the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Contractor Employees; and/or

(b) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;

71.13.3. any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- 71.13.4. any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 71.13.5. any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- 71.13.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 71.13.7. a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and
- 71.13.8. any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or

omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.

71.14. The indemnities in Paragraph 71.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

**SCHEDULE 11
KEY PERSONNEL**

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

SCHEDULE 12 EXIT PLAN AND SERVICE TRANSFER ARRANGEMENTS

1. DEFINITIONS

1.0. In this Schedule, the following definitions shall apply:

"Documentation"		<p>any descriptions of the Services, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) which is required to be supplied by the Contractor to the Authority under the Contract as:</p> <ul style="list-style-type: none"> a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; b) is required by the Contractor in order to provide the Services; and/or c) has been or shall be generated for the purpose of providing the Services;
"Ethical Agreement"	Wall	<p>means an ethical wall agreement in a form similar to the draft ethical wall agreement set out in the Model Services Contract at Schedule 8.5 (Exit Management) Annex 2 (Draft Ethical Wall Agreement) or an alternative form of ethical wall agreement agreed between the Parties;</p>
"Model Contract"	Services	<p>means the Model Services Contract published and maintained by Cabinet Office, as update from time to time, the current version of which is published at https://www.gov.uk/government/publications/model-services-contract</p>
"Registers"		<p>means the registers and database referred to in Paragraph 4.2.1 and Paragraph 4.2.2 of this Schedule 12;</p>
"Transferable Contracts"		<p>Sub-contracts, licences or other agreements which are necessary to enable the Authority or any Replacement Contractor to provide the Replacement Services, including in relation to licences all relevant Documentation;</p>

“Transitional Assistance Notice” has the meaning set out in Paragraph 5.1 of this Schedule 12;

“Transitional Assistance Period” has the meaning set out in Paragraph 5.1.3 of this Schedule 12.

2. PURPOSE OF THIS SCHEDULE

- 2.1.** The Contractor is required to ensure the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination (including partial termination) or expiry of this Contract. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 2.2.** For the avoidance of doubt the Contractor is responsible for the overall management of the exit and Service transfer arrangements.

3. EXIT

- 3.1.** The Exit Plan shall:
- 3.1.1. address each of the issues set out in this Schedule 12 (Exit Plan and Service Transfer Arrangements) to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
 - 3.1.2. detail how the Services will transfer to the Replacement Contractor and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Contractor or any of its Sub-contractors (where applicable);
 - 3.1.3. specify the scope of the Transitional Assistance Services that may be required by the Authority, any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
 - 3.1.4. provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
 - 3.1.5. set out the management structure to be put in place and employed during the Termination Period.

4. OBLIGATIONS DURING THE TERM

- 4.1.** The Contractor and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within six (6) Months after the Commencement Date. The Contractor's exit manager shall be responsible for ensuring that the Contractor and its employees, agents and Sub-contractors comply with this Schedule. The Contractor shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with this Paragraph 4.1. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 12 and each Party's compliance with it.
- 4.2.** During the Term, the Contractor shall:
- 4.2.1. create and maintain a register of:
 - (a) all assets, detailing their ownership status; and
 - (b) all Sub-contracts and other agreements required to perform the Services;
 - 4.2.2. create and maintain a database setting out the Contractor's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Contractor and/or the Authority to acquire sufficient technical understanding of how the Contractor provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and
 - 4.2.3. at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.
- 4.3.** The Parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.
- 4.4.** At the same time as the Contractor submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.
- 4.5.** On reasonable notice, the Contractor shall provide to the Authority and/or to its Replacement Contractor (subject to the Replacement Contractor entering into reasonable written confidentiality undertakings with the Contractor), such material and information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence.

5. TRANSITIONAL ASSISTANCE SERVICES

- 5.1. The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Contractor a notice to that effect (a “**Transitional Assistance Notice**”) at any time prior to the termination or expiry of the Contract. The Transitional Assistance Notice shall specify:
- 5.1.1. the date from which Transitional Assistance Services are required;
 - 5.1.2. the nature and extent of the Transitional Assistance Services required; and
 - 5.1.3. the period during which it is anticipated that Transitional Assistance Services will be required (“**Transitional Assistance Period**”) which shall continue no longer than twelve (12) Months after the date that the Contractor ceases to provide the Services.
- 5.2. The Authority shall have an option to extend the Transitional Assistance Period beyond the period specified in the Transitional Assistance Notice by written notice to the Contractor provided that such extension shall not extend beyond six (6) Months after the expiry of the period referred to in Paragraph 5.1.3 (Transitional Assistance Services) of this Schedule 12 (Exit Plan and Service Transfer Arrangements).
- 5.3. The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than twenty (20) days' notice upon the Contractor to such effect.
- 5.4. The Transitional Assistance Services shall be provided in good faith and in accordance with Good Industry Practice.
- 5.5. During the Transitional Assistance Period, the Contractor shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Contractor shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Contractor in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 6 and subject to agreement under the Change Control Process.
- 5.6. The Authority and the Contractor acknowledge that the transition of the Services to the Replacement Contractor may be phased over a period of time so that certain identified Services are transferred to the Replacement Contractor before others.

- 5.7.** The Authority shall, at the Contractor's reasonable request, require the Replacement Contractor and any agent or personnel of the Replacement Contractor, to enter into an appropriate confidentiality undertaking with the Contractor.
- 5.8.** The Contractor shall comply with all of its obligations contained in the Exit Plan.
- 5.9.** From the date six (6) Months before expiry or from the service by either Party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Contractor shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.10.** The Contractor shall comply with all of its obligations regarding the Contractor Personnel in accordance with Clause 5 (Application of TUPE at the Commencement of the Provision of the Services) of Schedule 1 and Schedule 10 (Staff Transfer).
- 5.11.** Upon the termination or expiry of the Contract (as the case may be) or upon expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Contractor to provide the Services or the Transitional Assistance Services, at any time during the Termination Period (as the Authority shall require):
- 5.11.1. the Contractor shall cease to use the Authority Data and, at the direction of the Authority either:
- (a) provide the Authority or Replacement Contractor with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority); or
 - (b) destroy (including removal from any hard disk) or return (at the Authority's option) all copies of the Authority Data not required to be retained by the Contractor for statutory compliance purposes and confirm in writing that such destruction has taken place;
- 5.11.2. the Contractor shall erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Period any software containing the Intellectual Property Rights owned by the Authority;
- 5.11.3. the Contractor shall return to the Authority such of the following as are in the Contractor's possession or control:
- (a) all materials created by the Contractor under this Contract, the Intellectual Property Rights in which are owned by the Authority;
 - (b) any other equipment which belongs to the Authority; and

- (c) any items that have been on-charged to the Authority, such as consumables;
 - 5.11.4. the Contractor shall vacate any Authority's Premises; and
 - 5.11.5. each Party shall return to the other Party all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information.
- 5.12.** The Transitional Assistance Services to be provided by the Contractor shall include (without limitation) such of the following services as the Authority may specify:
 - 5.12.1. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority or Replacement Contractor after the end of the Termination Period;
 - 5.12.2. providing details of work volumes and staffing requirements over the preceding twelve (12) Months;
 - 5.12.3. analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;
 - 5.12.4. transferring all training material and providing appropriate training to those Authority and/or Replacement Contractor staff responsible for internal training in connection with the provision of the Services;
 - 5.12.5. providing for transfer to the Authority and/or the Replacement Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - 5.12.6. answering all reasonable questions from the Authority and/or the Replacement Contractor regarding the Services.
- 6. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**
 - 6.1.** The Authority may require the Contractor to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
 - 6.2.** If required to enter into the Ethical Wall Agreement, the Contractor will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The

Contractor's costs of entering into the Ethical Wall Agreement will be borne solely by the Contractor.

**SCHEDULE 13
PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

ANNEX 1: PROCESSING PERSONAL DATA

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.



The Processor shall comply with any further written instructions with respect to Processing by the Controller.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	The Authority is Controller and the Contractor is Processor The Parties acknowledge that in accordance with Clause 38.2 to 38.15 (Protection of Personal Data) and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor of the personal data processed in the delivery of the service.
Subject matter of the processing	The processing regards the approval of applications submitted by doctors and clinicians to be considered and approved as Section 12 doctors.
Duration of the processing	The service for the approval of s12 doctors will commence on April 1st, 2025, and will continue until March 31st, 2027. The contract may be extended, with a maximum duration until March 31st, 2030.
Nature and purposes of the processing	The nature of the processing will require collection, recording, storage, retrieval, use, disclosure by transmission and uploading of records into a digital database of the records submitted by applicants for review and approval to the contractor.

Type of Personal Data being Processed	Name, address, postcode, date of birth, previous names, mobiles/home phone number, email address, geographical location, job title, employment records
Categories of Data Subject	Wider health and social care staff – doctors and clinicians.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	Data will be transferred to DHSC for archiving or securely stored in the NHS s12 doctors/clinicians database for a period of 11 years.
Lawful basis for processing	Article 6(1)(e) of the UKGDPR which permits processing of personal data that is necessary to perform a task or function in the public interest or for our official functions and the task or function has a clear basis in law. This supports DHSC's statutory functions in relation to the provision of evaluating and approving s12 of the Mental Health Act doctors.
Locations at which the Contractor and/or its Sub-contractors process Personal Data under this Contract	UK/EEAA

ANNEX 2: JOINT CONTROLLER AGREEMENT – NOT IN USE

SCHEDULE 14 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

7. BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

7.1. The Contractor shall ensure that the BCDR Plan shall include:

- 7.1.1. details of how the Contractor will implement the BCDR Plan;
- 7.1.2. details of how the BCDR Plan inter-operates with any other disaster recovery and business continuity plan of the Authority (as notified by the Authority from time to time);
- 7.1.3. details as to how the invocation of any element of the BCDR Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the services; and
- 7.1.4. identification of all reasonably possible failures of or disruptions to the Services.

7.2. The Contractor shall ensure that the BCDR Plan shall also include:

- 7.2.1. back-up methodology;
- 7.2.2. data verification procedures;
- 7.2.3. identification of all potential disaster recovery scenarios;
- 7.2.4. provision of appropriate levels of spares, maintenance equipment and test equipment;
- 7.2.5. responsibilities of the Sub-contractors in the event of a disaster;
- 7.2.6. hardware configuration details, network planning and invocation rules and procedures;
- 7.2.7. data centre site audits;
- 7.2.8. Authority obligations and dependencies.

7.3. The BCDR Plan shall be designed so as to ensure that:

- 7.3.1. the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;

- 7.3.2. the adverse impact of any disaster is minimised as far as reasonably possible;
 - 7.3.3. it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 7.3.4. it details a process for the management of disaster recovery testing.
- 7.4.** The Contractor shall also ensure that the BCDR Plan defines the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations. It shall also define the rules for storing data, the required availability for that data and the mechanisms for making that data available. It shall also include:
- 7.4.1. risk analysis (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis);
 - 7.4.2. possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure;
 - 7.4.3. business continuity maintenance;
 - 7.4.4. documentation of business processes, procedures and responsibilities;
 - 7.4.5. a communications strategy; and
 - 7.4.6. procedures for reverting to normal service.

SCHEDULE 15 STEP-IN RIGHTS**8. STEP-IN RIGHTS**

8.1. In this Schedule, the following definitions shall apply:

“Deductions” means any service credits, compensation for unacceptable KPI failure, delay payments or any other deduction which is paid or payable to the Authority under this Contract;

“Sites” means any premises (including the Premises, the Contractor’s premises or third party premises) from, to or at which:

- (a) the Services are (or are to be) provided; or
- (b) the Contractor manages, organises or otherwise directs the provision or the use of the Services.

“Step-In Notice” has the meaning given in Clause 8.2 of this Schedule 15 (Step-In Rights);

“Step-In Trigger Event” means:

- (a) a condition occurs that triggers the Authority's right to terminate the Contract under Clause 42 (Termination) of Schedule 2;
- (b) a Default by the Contractor that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under this Contract;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 8.2 of this Schedule 15 (Step-In Rights) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty.

“Step-Out Date” has the meaning given in Clause 8.6.2 of this Schedule 15 (Step-In Rights);

“Step-Out Notice” has the meaning given in Clause 8.6 of this Schedule 15 (Step-In Rights);

“Step-Out Plan” has the meaning given in Clause 8.7 of this Schedule 15 (Step-In Rights);

“Required Action” has the meaning given in Clause 8.2.1 of this Schedule 15 (Step-In Rights);

8.2. On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Contractor (a **“Step-In Notice”**) that it will be taking action under this Schedule 15 (Step-In Rights), either itself or with the assistance of a third party (provided any third parties appointed by the Authority shall be subject to the same confidentiality obligations as the Authority under Clause 53 (Confidential Information) of Schedule 2). The Step-In Notice shall set out the following:

8.2.1. the action the Authority wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);

8.2.2. the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Contractor’s Default;

8.2.3. the date on which it wishes to commence the Required Action;

8.2.4. the time period which it believes will be necessary for the Required Action;

8.2.5. whether the Authority will require access to the Contractor’s premises and/or the Sites; and

8.2.6. to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Contractor’s obligations to provide the Services during the period that the Required Action is being taken.

8.3. Following service of a Step-In Notice, the Authority shall:

8.3.1. take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

8.3.2. keep records of the Required Action taken and provide information about the Required Action to the Contractor;

- 8.3.3. co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 8.3.4. act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this Schedule 15 (Step-In Rights).
- 8.4. For so long as and to the extent that the Required Action is continuing, then:
- 8.4.1. the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 8.4.2. no Deductions shall be applicable in relation to the Contract Price in respect of Services that are the subject of the Required Action and the provisions of Clause 8.5 of this Schedule 15 (Step-In Rights) shall apply to Deductions from Contract Price in respect of other Services; and
 - 8.4.3. the Authority shall pay to the Contractor the Contract Price after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 8.5. If the Contractor demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Authority not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Contract Price.
- 8.6. Before ceasing to exercise its Step-In rights under this Schedule 15 (Step-In Rights) the Authority shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 8.6.1. the Required Action it has actually taken; and
 - 8.6.2. the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with Clause 8.7 of this Schedule 15 (Step-In Rights).
- 8.7. The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

- 8.8.** If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 8.9.** The Contractor shall bear its own costs in connection with any step-in by the Authority under this Schedule 15 (Step-In Rights), provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 8.9.1. limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - 8.9.2. limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor's Default).