

UKHSA Terms and Conditions for the Supply of Services

ORDER FORM AND KEY PROVISIONS

The Authority	The Secretary of State for Health and Social Care as part of the Crown acting through the UK Health Security Agency, 10 South Colonnade, London, E14 4PU (the "Authority")
The Supplier	CN Bio Innovations Limited, 332 Cambridge Science Park, Milton Road, Cambridge, CB4 0WN, United Kingdom Ltd, Company registration ID 06517359 (the "Supplier")
Type of Services	Bespoke Customer Technical and Scientific Support (2-Year Package)
Domestic/Overseas Supplier	Domestic Supplier
Document Created by	<div>██████████</div> <div>████████████████████</div>

This Contract is made subject to the terms set out in the Order Form and schedules ("**Schedules**") below. The Authority and the Supplier undertake to comply with the provisions of the Order Form and the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract. For the avoidance of doubt, the Contract consists of the terms set out in the Order Form and the Schedules, together with the annexes as stated.

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations

Order Form

1. Contract Reference	C297197- Organ on a Chip system – Bespoke Customer Technical and Scientific Support
2. Authority	The Secretary of State for Health and Social Care as part of the Crown through the UK Health Security Agency of 10 South Colonnade. London. E14 4PU (the "Authority")
3. Supplier	CN Bio Innovations Limited, 332 Cambridge Science Park, Milton Road, Cambridge, CB4 0WN, United Kingdom Ltd, Company registration ID 06517359 (the "Supplier")
4. The Contract	<p>The Supplier shall supply the services described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any (Annex/Annexes).</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Any purchase order issued by the Authority in respect of this Contract does not form part of this Contract.</p>
5. Services to be Provided	<p>Services to be supplied:</p> <p>2-year Maintenance and support services for 5 x PhysioMimix® Organ on a Chip systems purchased under the agreement between the Authority and Supplier dated 1 December 2023 with the contract reference "C212249".</p>

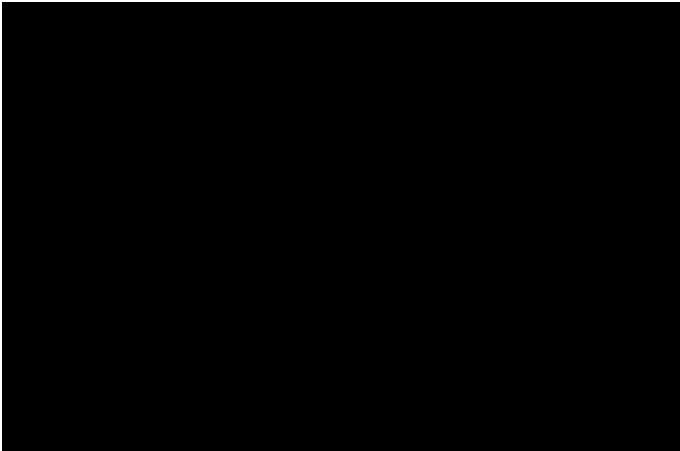
<p>6. Specification</p>	<p>6.1 The Supplier shall provide the following Services.</p> <p>The Supplier shall provide an annual maintenance service as follows:</p> <p><u>Bespoke Customer Technical and Scientific Support Cover</u></p> <p>Each system includes 1x docking station, 1x controller and 3x Single-organ drivers</p> <p>2-year support contract for the 5 systems with the following offering:</p> <p><u>1. For all systems (CL2 and CL3):</u></p> <ul style="list-style-type: none"> a. Annual service maintenance visit (x 2 – 1 service visit per year per lab) <ul style="list-style-type: none"> i. Replacement of all filters Note – HEPA filters in the umbilical cable will only be replaced in the CL2- based systems. ii. Change of desiccant and thorough cleaning of jar Note – Old desiccant must be discarded in the CL3-based systems before the decontamination process and service visit. iii. Checking for water damage. iv. Checking system for any leaks (air and other). v. Replacement of MPS driver's O-rings (wear and tear, only if required). vi. Replacement of any damaged or worn parts. vii. Firmware upgrade on both Controller and MPS drivers (if new firmware available at time of visit, and if compatible with current system). viii. Full diagnostic profile, including vacuum system. b. Unlimited number of repairs c. Scientific support: <ul style="list-style-type: none"> i. Monthly call with our FSA ii. Access to Lab Portal with: <ul style="list-style-type: none"> - Training videos for the handling of the PhysioMimix system and the Barrier plate, - Agreed validated SOPs for lung work, iii. Annual scientific site visit (x 2) by FAS to review any hurdle and offer refresher training on system. <p><u>2. For CL3 systems only:</u></p> <ul style="list-style-type: none"> a. Replacement of the umbilical cable during a service visit. b. Replacement of hardware part if liquid damage. c. Repair of part if no liquid involved in the damage. d. Solution deployment within 10 to 15 business days of faulty parts prior to diagnosis and repair, following proper CL3 decontamination procedures and post-survival time of the pathogen (recorded as in use with the Equipment) depending on the type of fault. <p><u>3. For CL2 systems only:</u></p> <ul style="list-style-type: none"> a. Solution deployment within 5 to 10 business days.
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	<p>6.2 The Supplier shall acknowledge and respond to all queries submitted by the Authority via email within 2 (two) Business Days of receipt.</p> <p>6.3 The Supplier shall meet (either in person or virtually) with the Authority's representative to discuss service requirements and other management information as and when agreed by both parties.</p>
7. Term	<p>7.1 This Contract shall be deemed to have commenced on the date of counter signature of this Contract document by UKHSA (the "Commencement Date").</p> <p>7.2 This Contract shall unless terminated earlier, or extended, in accordance with its terms expire on 31st January 2026 (the "Term").</p> <p>7.3 The Parties may agree to extend this Contract for one (1) period of up to twelve (12) months subject to: a) the written agreement by both Parties; and b) the payment of renewal fees to be negotiated in good faith at the time of the extension and paid in accordance with the Contract.</p>
8. Charges	<p>The Contract Price shall be £136,000.00 (One Hundred thirty-six thousand pounds) only (excluding VAT), which shall be due on the date the contract is signed by both the Authority and Supplier ("Effective Date") and paid in accordance with the Contract.</p>
9. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to: [REDACTED]</p> <p>UKHSA Billing Address:</p> <p style="padding-left: 40px;">Accounts Payable; UK Health Security Agency, Manor Farm Road, Porton Down, Salisbury, SP4 0JG</p> <p>UKHSA VAT No: GB888851648</p> <p>Following the countersignature of this contract by UKHSA, the Supplier will send a unique purchase order (the 'PO') Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment.</p>

	If you have a query regarding an outstanding payment, please contact our Accounts Payable team by email to: [REDACTED]	
10. Authority Representative(s)	For general liaison your contact will continue to be [REDACTED] [REDACTED]	
11. Supplier Representative	For general liaison your contact will be [REDACTED] [REDACTED]	
12. Address for notices	Authority: [REDACTED] UK Health Security Agency 10 South Colonnade London E14 4PU	Supplier: CN Bio Innovations Ltd 332 Cambridge Science Park Milton Road, Cambridge CB4 0WN
13. Key personnel	Authority: [REDACTED]	Supplier: [REDACTED]
14. Procedures and Policies	The Supplier shall perform the Service in accordance with the following Authority and cross-government policies and procedures: DHSC Data Protection Policy; Data Breach Notification Policy; DHSC Fraud, Bribery and Corruption Policy and Response Plan	

15 Personal Data	The Supplier is the Data Processor and the Authority is the Data Controller. The Processing of Personal Data is likely to be limited to business contact details only such as name, e mail address, position, telephone number and details of the fault/query related to the Services. The Processing of this limited business Personal Data is solely for the purpose of the Supplier delivering the Services and carrying out maintenance of the equipment. There shall be no requirement for the Supplier to retain the Personal Data after the end of the Contract and the Personal Data shall be retained only to the extent necessary for providing the Services and ensuring the equipment is in good working order and thereafter shall be deleted.
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Signed by the authorised representative of THE AUTHORITY:



Date Signed: 12-Nov-2024

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 2 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 3 to 12 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Order of precedence

- 2.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
 - 2.1.1 Order Form;
 - 2.1.2 Schedule 1: Key Provisions;
 - 2.1.3 Schedule 2: General Terms and Conditions;
 - 2.1.4 Schedule 3: Definitions and Interpretations;
 - 2.1.5 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
- 2.2 For the avoidance of doubt, the Order Form shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included in these Terms and Conditions. Should there be a conflict between these parts of the Order Form, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

Optional Key Provisions

3 Purchase Orders ☐ (only applicable to the Contract if this box is checked)

- 3.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier 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 delivery. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.

4 Time of the essence ☐ (only applicable to the Contract if this box is checked)

- 4.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 12.4 (i) of Schedule 2.

5 Specific time periods for inspection (only applicable to the Contract if this box is checked and Clause 6.1 of this Schedule 1 is completed)

- 5.1 The Authority shall visually inspect the Goods within 5 days of the date of delivery of the relevant Goods.

6 Specific time periods for rights and remedies under Clause 4.6 of Schedule 2 ☐ (only applicable to the Contract if this box is checked and Clause 7.1 of this Schedule 1 is completed)

- 6.1 The Authority's rights and remedies under Clause 4.6 of Schedule 2 shall cease 12 months from the date of delivery of the relevant Goods.

7 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 is completed)

- 7.1 The Authority may terminate this Contract or cancel any order or part order of Goods which has not been Delivered by issuing a Termination Notice to the Supplier at any time on two (2) week's written notice.
- 7.2 Subject to Clauses 14 (Limitation of Liability) and 15 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with this Clause 8 (Termination for Convenience) of this Schedule 1, then the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Authority shall only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under this Clause 8 (Termination for Convenience) of this Schedule 1.

7.3 The Authority shall not be liable under this Clause 8 (Termination for Convenience) of this Schedule 1 to pay any sum which:

- 7.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- 7.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Term; or
- 7.3.3 is a claim by the Supplier for loss of profit, due to early termination of the Contract.

8 Consigned Goods ☐ (only applicable to the Contract if this box is checked)

- 8.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause 2 of Schedule 2 in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.
- 8.2 For the avoidance of doubt, Clause 4 of Schedule 2 shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 8.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 8.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
 - 8.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
 - 8.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
 - 8.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
 - 8.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 8.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each [week/month/quarter/other agreed period] detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a

sale will take place at the point any Consigned Goods are taken into use by the Authority.

- 8.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).
- 8.7 Each [**week/month/quarter/other agreed period**] the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:
 - 8.7.1 the Contract Price of the Minimum Quantity in the relevant period; and
 - 8.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 8.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 8.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of:
 - (a) collection by the Supplier; or
 - (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods.If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 8.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within [*insert period*] of their delivery to the Authority and/or which have a remaining shelf life of less than [*insert period*].
- 8.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of Schedule 2.

- 8.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 10.8 and 10.9 of this Schedule 1 shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 1, shall survive the expiry or earlier termination of this Contract for these purposes.

9 Different Levels and/or Types of Insurance ☒ (only applicable to the Contract if this box is checked)

- 9.1 The Supplier 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

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

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

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

The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 7.7 and Clause 12.5.5 of Schedule 2 together with the associated definitions in Schedule 3 (Definitions and Interpretation), shall apply.

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

Visibility of Sub-Contract Opportunities in the Supply Chain

- 12.1 The Supplier shall:

- 12.1.1 subject to clause 13.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Goods above a minimum threshold of £25,000 that arise during the Term;
- 12.1.2 within 90 days of awarding a Sub-Contract to a Sub-Supplier, update the notice on Contract Finder with details of the successful Sub-Supplier;
- 12.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 12.1.4 provide reports on the information at clause 13.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
- 12.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 12.2 Each advert referred to at clause 13.1.1 of this Schedule 1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 12.3 The obligation on the Supplier set out at clause 13.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 12.4 Notwithstanding clause 13.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

Visibility of Supply Chain Spend

- 12.5 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Authority which shall include:
 - 12.5.1 the total contract revenue received directly on the Contract;
 - 12.5.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
 - 12.5.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 12.6 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Authority from time to time. The Supplier agrees that it shall provide the information detailed at clause 13.5 and acknowledges that the required information may be changed from time to time

(including the data required and/or format) by the Authority. The Authority agrees to give at least thirty (30) days' notice in writing of any such change.

- 12.7 The Supplier further agrees and acknowledges that it may not make any amendment to any required Supply Chain Information Report template without the prior Approval of the Authority.
- 12.8 Without prejudice to Clause 26.6 (Assignment, novation and sub-contracting) of Schedule 2, the Supplier shall:
- 12.8.1 pay any sums which are due from it to any Sub-Supplier or Unconnected Sub-Supplier pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
- (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls 60 days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 12.8.2 include within the management information produced by it pursuant Clause 7 (Contract Management) of Schedule 2 a summary of its compliance with this Clause 13.8, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 12.9 If the Supplier fails to pay 95% or above of all Sub-Supplier or Unconnected Sub-Supplier invoices (or other notice of an amount for payment) within 60 days in either of the previous two six month periods, the Supplier shall provide to the Authority within 15 Working Days of submission of the management information required by clause 13.8.2 of this Schedule 1 an action plan (the "Action Plan") for improvement. The Action Plan shall include, but not be limited to, the following:
- 12.9.1 identification of the primary causes of failure to pay 95% or above of all Sub-Supplier or Unconnected Sub-Supplier invoices (or other notice of an amount for payment) within 60 days of receipt;
- 12.9.2 actions to address each of the causes set out in sub-paragraph 13.9.1; and
- 12.9.3 mechanism for and commitment to regular reporting on progress to the Supplier's board of directors.
- 12.10 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is provided to the Authority.

- 12.11 Where the Supplier fails to pay any sums due to any Sub-Supplier or Unconnected Sub-Supplier in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 12.12 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-Suppliers or Unconnected Sub-Suppliers which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Tender (to the extent it is not already included).

13 Tackling Modern Slavery ☒ (only applicable to the Contract if this box is checked)

- 13.1 The Supplier shall, and procure that each of its Sub-Suppliers shall, comply with the Authority's anti-slavery policy as provided to the Supplier from time to time ("**Authority's Anti-slavery Policy**").
- 13.2 The Supplier shall:
 - 13.2.1 implement due diligence procedures for its Sub-Suppliers and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
 - 13.2.2 respond promptly to all slavery and trafficking due diligence questionnaires or complete any modern slavery risk assessment or identification tools issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 13.2.3 shall comply with all reasonable supply chain information requests from the Authority and its modern slavery requirements and obligations;
 - 13.2.4 maintain a complete set of records to trace the supply chain of all Goods provided to the Authority regarding the Contract;
 - 13.2.5 permit the Authority and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 16 (Tackling Modern Slavery) of this Schedule 1, to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier Personnel to audit the Supplier's compliance with its obligations this clause;
 - 13.2.6 implement annual audits of its compliance and its Sub-Suppliers' and Supplier's compliance with the Authority's Anti-slavery Policy, either directly or through a third party auditor.
 - 13.2.7 implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015 and the Authority's Anti-slavery policy.

Schedule 2

GENERAL TERMS AND CONDITIONS

1. PROVISION OF SERVICES

- 1.1. In consideration of the fees payable by the Authority, the Contractor shall use its reasonable endeavours to ensure that the Services:
 - 1.1.1. comply in all material respects with the Specification;
 - 1.1.2. are supplied promptly and in any event within any time limits as may be set out in this Contract but time for performance of the Services shall not be of the essence; and
 - 1.1.3. are supplied in accordance with the Contractor's Tender and the provisions of this Contract;
- 1.2. The Contractor shall:
 - 1.2.1. 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 13 (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 Specification; and
 - (e) the Contractor's own established procedures and practices to the extent that the same do not conflict with the requirements of Clauses 1.2.1(a) to 1.2.1(d), above; and
 - 1.2.2. deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 1.3. In the event that the Contractor becomes aware of any inconsistency between the requirements of Clauses 1.2.1(a) to 1.2.1(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.
- 1.4. No more than once in any Contract Year, the Authority may, at its own cost, inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 1.5. The Contractor shall comply fully with its obligations set out in the Specification and the Tender.
- 1.6. If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 1.7. The Contractor shall notify the Authority as soon as it becomes aware of:

- 1.7.1. any breach, or potential breach, of the Anti-slavery Policy and if Key Provision 13 applies, any breach, or potential breach, of the Authority's Anti-slavery Policy; or
 - 1.7.2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 1.8. The Authority will at all times abide by and fully comply with all applicable Laws or regulations and provide all information and assistance reasonably required by the Contractor to enable the Contractor to perform its obligations under this Contract including providing or procuring access to any relevant premises owned or occupied by the Authority which shall include provision of a suitable and safe working environment for the provision of the Services in any relevant premises owned or occupied by the Authority.

2. NOT USED

3. CONTRACTOR PERSONNEL

- 3.1. The Contractor Personnel involved in the performance of the Contract must:
 - 3.1.1. be suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 3.1.2. be vetted using Good Industry Practice and in any security vetting requirements specified in the Order Form; and
 - 3.1.3. 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.
- 3.2. 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. The Contractor shall ensure any such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 3.3. The Authority may refuse to grant access to and remove any of the Contractor Personnel from the Premises who do not comply with Clause 3.1 of this **Error! Reference source not found.** or if they otherwise present a security threat.
- 3.4. 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.
- 3.5. If the Contractor fails to comply with Clause 3.4 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 either party.

Income Tax and National Insurance Contributions

- 3.6. 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:

- 3.6.1. 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
 - 3.6.2. 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.
- 3.7. In the event that any one of the Contractor Personnel is a Worker as defined in Clause 1 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:
- 3.7.1. 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 3.6 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;
 - 3.7.2. 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 3.7.1 of this **Error! Reference source not found.** schedule 2; and/or
 - (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 3.6 of this **Error! Reference source not found.** schedule 2 or confirms that the Worker is not complying with those requirements; and
 - 3.7.3. 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.

4. MANNER OF CARRYING OUT THE SERVICES

- 4.1. The Contractor shall begin performing the Services on the 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.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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).

5. TERM

- 5.1. This Contract shall commence on the 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.

- 5.2. The Parties may agree 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 7 **Error! Reference source not found.** (Price Adjustment on Extension of Term) of the Key Provisions, if applicable) throughout any such extended period.

6. CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

- 6.1. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise agreed) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 6.2. The Contractor shall comply, as the Authority shall require, with the monitoring arrangements (if any) notified to the Contractor by the Authority (Contract Monitoring) and any additional monitoring arrangements that the Authority shall reasonably require from time to time.
- 6.3. 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.
- 6.4. The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 6.4.1. whether the Contractor believes the objectives of the Contract were achieved;
 - 6.4.2. how far the intended benefits sought in the Authority's Specification and that had been forecast in the Tender were achieved; and
 - 6.4.3. to identify any lessons learnt for future projects.
- 6.5. The Authority shall be able to share and use any information arising from such meetings referred to in Clause 6.4 of this **Error! Reference source not found.** Schedule 2 as it sees fit.

7. PRICE AND PAYMENT

Contract Price

- 7.1. 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 7 (Price and Payment) of this **Error! Reference source not found.** The Contract Price shall remain fixed for the Term.
- 7.2. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 15.5 (Termination) of this **Error! Reference source not found.** 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.
- 7.3. The Authority may not 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

- 7.4. 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.

- 7.5. 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 7.5 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

- 7.6. The Contractor shall submit an invoice to the Authority on the Effective Date. The Contractor shall ensure that the 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.
- 7.7. 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

- 7.8. The Authority shall be entitled to withhold payment due under this Clause 7 (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 24.9 (Assignment, Novation and Sub-contracting) of this Error! Reference source not found.. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.

Electronic Invoicing

- 7.9. 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.
- 7.10. For the purposes of clause 7.9, 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.
- 7.11. 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).

8. WARRANTIES

- 8.1. The Contractor warrants that:
- 8.1.1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 8.1.2. 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;
 - 8.1.3. this Contract is executed by a duly authorised representative of the Contractor;
 - 8.1.4. all necessary rights, authorisations, licences, consents and regulatory approvals (including in relation to IPRs) 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;

- 8.1.5. in entering the Contract it has not committed any Fraud;
- 8.1.6. 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;
- 8.1.7. 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;
- 8.1.8. 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;
- 8.1.9. 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);
- 8.1.10. 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;
- 8.1.11. 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;
- 8.1.12. 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;
- 8.1.13. 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
- 8.2. 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:
 - 8.2.1. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 8.2.2. 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.
- 8.3. The Contractor warrants and undertakes to the Authority that:
 - 8.3.1. its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and
 - 8.3.2. 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
 - 8.3.3. 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 8.3.3 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery policy.
- 8.4. The Contractor shall not be liable for any failure to comply with this Clause 8 (Warranties) where the same arises directly or indirectly and whether in whole or in part as a result of:
 - 8.4.1. A breach by the Authority of any of its obligations under this Contract; or
 - 8.4.2. A Force Majeure Event.
- 8.5. If the Contractor's performance of any of its obligations under this Contract is prevented or delayed by any act or omission by the Authority or failure by the Authority to perform any relevant obligations (Authority Default):
 - 8.5.1. The Contractor will not be liable for any costs or losses sustained or incurred by the Authority arising directly or indirectly from the Contractor's failure or delay to perform any of its obligations under this Contract; and
 - 8.5.2. The Authority shall reimburse the Contractor for reasonable and proven costs or losses sustained or incurred by the Contractor arising directly from the Authority Default.
- 8.6. 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.
- 8.7. The warranties set out in this Clause 8 (Warranties) of this Schedule 2 shall be deemed to be repeated by the Contractor on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 8.8. Each of the warranties set out in this Clause 8 (Warranties) of this Schedule 2 shall be construed as a separate 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.
- 8.9. If at any time the Contractor becomes aware that a warranty given by it under this Clause 8 (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.
- 8.10. 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.

8.11. 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.

8.12. The Authority warrants that it has the right, power and authority to enter into this Contract and grant to the Contractor the rights (if any) contemplated by this Contract.

9. INTELLECTUAL PROPERTY

9.1. Each Party keeps ownership of its own Existing IPRs. 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.

9.2. 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.

9.3. Licences granted by the Contractor: Contractor Existing IPR

9.3.1. 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 9.3.2.

9.3.2. The Contractor gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use and change the Contractor's Existing IPR which is reasonably required by the Authority to enable it or any End User to use and receive the Services.

9.4. Licences granted by the Authority and New IPR

9.4.1. Any New IPR created under the Contract is owned by the Contractor. The Contractor grants the Authority to use any New IPR to the extent it is needed to utilise the Services for the Term.

9.4.2. 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.

9.5. Open Licence Publication Not Used

9.6. **Third Party IPR**

9.6.1. The Contractor shall not use in the delivery of the Services any Third Party IPR unless Approval 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 clause 9.6.3. If the Contractor cannot obtain for the Authority a licence on the terms set out in clause 9.6.3 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.

9.6.2. 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.

- 9.6.3. 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.

9.7. Termination of licences

- 9.7.1. Not used.

- 9.7.2. Not used.

- 9.7.3. Any licence granted to the Contractor pursuant to clause 9.4 (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 three 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.

10. AUTHORITY DATA

- 10.1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 10.2. 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.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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.
- 10.7. 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:

- 10.7.1. 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
 - 10.7.2. itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 10.8. 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.

11. PROTECTION OF PERSONAL DATA

Status of the Controller

- 11.1. 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:
- 11.1.1. "Controller" (where the other Party acts as the "Processor");
 - 11.1.2. "Processor" (where the other Party acts as the "Controller");
- and the Parties shall set out in schedule 1 Key Provisions (Processing, Personal Data and Data Subjects) which scenario or scenarios are intended to apply under this Contract.
- 11.2. Where a Party is a Processor, the only Processing that it is authorised to do is listed in schedule 1 Key Provisions(Processing, Personal Data and Data Subjects) by the Controller.
- 11.3. The Processor shall notify the Controller within a reasonable time period if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 11.4. 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:
- 11.4.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 11.4.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 11.4.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 11.4.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.5. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 11.5.1. process that Personal Data only in accordance with Schedule 1 Key Provisions (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;
 - 11.5.2. ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 10 (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;

11.5.3. ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract;
- (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 11 (Protection of Personal Data), Clause 10 (Authority Data) and Clause 26 (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.

11.6. Subject to Clause 11.7 of this Schedule 2, the Processor shall notify the Controller within a reasonable time period if it:

11.6.1. receives a Data Subject Request (or purported Data Subject Request);

11.6.2. receives a request to rectify, block or erase any Personal Data;

- 11.6.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 11.6.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 11.6.5. 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
 - 11.6.6. becomes aware of a Data Loss Event.
- 11.7. The Processor's obligation to notify under Clause 11.6 of this Schedule 2 shall include the provision of further information to the Controller in phases, as details become available.
- 11.8. 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 11.6 of this Schedule 2 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 11.8.1. the Controller with full details and copies of the complaint, communication or request;
 - 11.8.2. 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;
 - 11.8.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 11.8.4. assistance as requested by the Controller following any Data Loss Event; and/or
 - 11.8.5. 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.
- 11.9. 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:
- 11.9.1. the Controller determines that the Processing is not occasional;
 - 11.9.2. 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
 - 11.9.3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.10. The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 11.11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 11.12. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 11.12.1. notify the Controller in writing of the intended Sub-processor and Processing;

- 11.12.2. obtain the written consent of the Controller;
 - 11.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 11 (Protection of Personal Data) such that they apply to the Sub-processor; and
 - 11.12.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 11.13. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 11.14. 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).
- 11.15. 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.
- 11.16. 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 1 Key Provisions.
- 11.17. 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 1 Key Provisions.

12. RECORDS RETENTION AND RIGHT OF AUDIT

- 12.1. The Contractor shall in accordance with 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 the right to audit.
- 12.2. The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- 12.3. For the purpose of:
- 12.3.1. the examination and certification of the Authority's accounts; or
 - 12.3.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources

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

- 12.4. 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.

13. INDEMNITY, LIMITATION OF LIABILITY AND SUSPENSION OF SERVICES

- 13.1. [NOT USED]

Unlimited liability

- 13.2. Neither Party excludes or limits liability to the other Party for:
- 13.2.1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - 13.2.2. bribery or Fraud or fraudulent misrepresentation by it or its employees;
 - 13.2.3. any liability to the extent it cannot be limited or excluded by Law.
- 13.3. The Contractor's liability in respect of the indemnities in Clauses 3.6 (Income Tax and National Insurance Contributions), and Clause 7.4 (VAT), (Staff Transfer) shall be unlimited.
- 13.4. Not used.. .

Financials and other limits

- 13.5. Subject to Clauses 13.2, 13.3, and Clause 13.7 (Consequential Losses) of this schedule 2 **Error! Reference source not found.:**
- 13.5.1. 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 £1 million.
 - 13.5.2. the Contractor's aggregate liability in respect of:
 - (a) loss or damage to Authority Data; and
 - (b) breach of the Data Protection Legislation;that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed £1 million;
 - 13.5.3. 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) £1,000,000; 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.
- 13.6. [NOT USED]

Consequential loss

- 13.7. Subject always to Clauses 13.2, 13.3, and Clause 13.7 of this **Error! Reference source not found.** neither Party shall be liable to the other Party for:

- 13.7.1. any indirect, special or consequential loss;
- 13.7.2. loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 13.8. Notwithstanding Clause 13.7 but subject to Clause 13.5 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:
 - 13.8.1. 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;
 - 13.8.2. any wasted expenditure or charges.
- 13.9. Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 13.10. 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.

14. INSURANCE

- 14.1. 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.
- 14.2. 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.
- 14.3. 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.
- 14.4. 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 14 (Insurance) of this **Error! Reference source not found.** 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.
- 14.5. 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 13 (Indemnity and Limitation of Liability) of this schedule 2.

15. TERMINATION

- 15.1. In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any failure to pay any sums due under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the breaching Party the opportunity to remedy

such breach in the first instance via a remedial proposal put forward by the breaching Party ("**Remedial Proposal**") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the breaching Party 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 breaching Party to:

- 15.1.1. put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant Default or breach within a period of ten (10) Working Days (or such other period as the non-breaching Party may agree in writing) from the deemed date of receipt of the Breach Notice;
- 15.1.2. 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
- 15.1.3. 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 15.2.1(b) (Termination) of this schedule 2 a material breach of this Contract by the breaching Party not remedied in accordance with an agreed Remedial Proposal.

- 15.2. Either Party may terminate the Contract, or terminate the provision of any part of the Services, with immediate effect by serving a Termination Notice:

- 15.2.1. if the other Party 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
- 15.2.2. if the other Party 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 breaching Party 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.
- 15.2.3. In the case of the Contractor, if the Contractor does not commence delivery of the Services by the Commencement Date;
- 15.2.4. In the case of the Contractor, 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;
- 15.2.5. In the case of the Contractor, 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 24 (Assignment, Novation and Sub-contracting) of this schedule 2;

- 15.2.6. In the case of the Contractor, 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
 - 15.2.7. pursuant to and in accordance with Clause 3.5 (Contractor Personnel), Clause 9 (Intellectual Property Rights), Clause 19.5 (Conflict of Interest), Clause 21.7 (Force Majeure), Clause 26.10 (Confidential Information), Clause 30.2 (Official Secrets Acts and Finance Act), Clause 31.4 (Disruption) and Clause 32.5 (Complaints), of this schedule 2;
 - 15.2.8. in the case of the Contractor, where the warranty given by the Contractor pursuant to Clause 8 (Warranties) of this schedule 2 is materially untrue;
 - 15.2.9. in the case of the Contractor, where
 - (a) the warranty given by the Contractor pursuant to Clause 8.2 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 8.2.1 of this Schedule 2; or
 - (c) the Contractor fails to provide details of proposed mitigating factors required by Clause 8.2.2 of this Schedule 2 which in the reasonable opinion of the Authority, are acceptable; or
 - 15.2.10. on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Regulations; or
 - 15.2.11. in the case of the Contractor, if the Contractor commits a breach of the Anti-slavery Policy or the Authority's Anti-slavery Policy.
 - 15.3. 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:
 - 15.3.1. 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
 - 15.3.2. a failure or refusal by the Contractor to provide the financial or other security and/or assurances requested in accordance with Clause 15.3 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.
 - 15.4. 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.
 - 15.5. 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 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 7.8 (Recovery of Sums Due) of this schedule 2.

16. CONSEQUENCES OF EXPIRY OR EARLY TERMINATION OF THE CONTRACT

16.1. Where the Authority terminates the Contract under Clause 15 (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 15 (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.

16.2. Save as otherwise expressly provided in the Contract:

16.2.1. 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

16.2.2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clause 7 (Price and Payment), Clause 9 (Intellectual Property), Clause 11 (Protection of Personal Data), Clause 12 (Records Retention and Right of Audit), Clause 13 (Indemnity and Limitation of Liability), Clause 14 (Insurance), Clause 16 (Consequences of Expiry or Early Termination of the Contract), Clause 17 (Recovery upon Expiry or Early Termination of the Contract), Clause 25 (Prevention of Fraud and Bribery), Clause 26 (Confidential Information), Clause 27 (Freedom of Information Act), Clause 30 (Official Secrets Acts and Finance Act), Clauses 36.2 to 36.4 (Waiver), Clause 36.5 (Cumulative Remedies) and Clauses 36.10 to 36.11 (Law and Jurisdiction) of Schedule 2.

17. RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CONTRACT

17.1. 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:

17.1.1. immediately return to the Authority all Confidential Information, Personal Data, and Authority Existing 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);

17.1.2. 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;

17.1.3. vacate and procure that the Contractor Personnel vacate any premises of the Authority occupied for the purposes of providing the Services;

17.1.4. return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);

and

17.1.5. 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 to conduct due diligence.

17.2. If the Contractor fails to comply with Clause 17.1.1 and 17.1.2 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.

18. DISPUTE RESOLUTION

18.1. If there is a dispute, the senior representatives of the Parties who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.

18.2. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, Clause 18.3 shall apply.

18.3. Unless the Parties refer the dispute to mediation in accordance with Clause 18.2, the Parties agree that the courts of England and Wales have the exclusive jurisdiction to determine the dispute, grant interim remedies or grant any other provisional or protective relief.

18.4. 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.

19. CONFLICT OF INTEREST

19.1. 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 19 (Conflict of Interest) in order to assist the Authority with its compliance with its obligations under that PPN.

19.2. 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.

19.3. 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.

19.4. 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 19 (Conflict of Interest).

19.5. 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 19 (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.

20. CHANGE MANAGEMENT

20.1. 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.

20.2. Any change to the Services or other Variation to this Contract shall only be binding once it has been agreed either:

20.2.1. in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or

20.2.2. if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

Change in Law

20.3. 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:

20.3.1. a General Change in Law; or

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

20.4. If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 20.3.2 of this Schedule 2), the Contractor shall:

20.4.1. 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

20.4.2. 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.

20.5. 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 20.3.2 of this Schedule 2) shall be implemented in accordance with the Clause 20.2 of this Schedule 2.

21. FORCE MAJEURE

21.1. Subject to the remaining provisions of this Clause 21 (Force Majeure) (and, in relation to the Contractor, subject to its compliance with its obligations in Clause **Error! Reference source not found.** (Business Continuity and Disaster Recovery) of Schedule 1, if applicable), a Party may claim relief under this Clause 21 (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.

- 21.2. 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.
- 21.3. If the Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 21 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:
 - 21.3.1. are capable of being mitigated, but the Contractor has failed to do so;
 - 21.3.2. 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
 - 21.3.3. 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).
- 21.4. Subject to Clause 21.5, 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.
- 21.5. 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.
- 21.6. Where, as a result of a Force Majeure Event:
 - 21.6.1. 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 21.7; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 21.6.2. the Contractor fails to perform its obligations in accordance with this Contract:
 - (a) 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.
- 21.7. 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.
- 21.8. 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.

- 21.9. Relief from liability for the Affected Party under this Clause 21 (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 21.8.

22. EQUALITY AND DIVERSITY

- 22.1. The Contractor shall:

- 22.1.1. 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;
- 22.1.2. 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 use its reasonable endeavours to 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
- 22.1.3. impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Contractor by this Clause 22 (Equality and Diversity).
- 22.1.4. The Contractor shall meet reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause 22 (Equality and Diversity).

23. NOTICE

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

24. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

- 24.1. 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 (such consent not to be unreasonably withheld or delayed).

- 24.2. 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:
- 24.2.1. any other body established by the Crown; or
 - 24.2.2. under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 24.2.3. 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 24 (Assignment, Novation and Sub-contracting).
- 24.3. 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 24.2 of this **Error! Reference source not found.** (the "Transferee" in the rest of this Clause) the right of termination of the Authority in Clause 15.2.4 (Termination) of this **Error! Reference source not found.** shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 15.2.4 (Termination) of this **Error! Reference source not found.** were references to the Transferee).
- 24.4. The Contractor shall exercise due skill and care in the selection of any Sub-contractors to ensure that the Contractor is able to:
- 24.4.1. manage any Sub-contractors in accordance with Good Industry Practice;
 - 24.4.2. comply with its obligations under the Contract in the provision of the Services; and
 - 24.4.3. 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.
- 24.5. Prior to sub-contracting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:
- 24.5.1. the proposed Sub-contractor's name, registered office and company registration number;
 - 24.5.2. the scope of any Services to be provided by the proposed Sub-contractor; and
 - 24.5.3. any further information reasonably requested by the Authority.
- 24.6. The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 24.5 of this schedule 2 object to the appointment of the relevant Sub-contractor if they consider that:
- 24.6.1. 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;
 - 24.6.2. the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
 - 24.6.3. the proposed Sub-contractor employs unfit persons; and/or
 - 24.6.4. the proposed Sub-contractor should be excluded in accordance with Clause 24.12 of this schedule 2,

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

- 24.7. 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 the Contractor's notice issued pursuant to Clause 24.5 of this **Error! Reference source not found.**the Contractor may proceed with the proposed appointment.
- 24.8. 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:
- 24.8.1. 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;
 - 24.8.2. that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 24.8.1 of this schedule 2 the invoice shall be regarded as valid and undisputed for the purpose of Clause 24.8.3 of this schedule 2 after a reasonable time has passed;
 - 24.8.3. 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
 - 24.8.4. giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 24.8.5. requiring the Sub-contractor to include a clause to the same effect as this Clause 24.8 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.
- 24.9. 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.
- 24.10. Notwithstanding any provision of Clause 26 (Confidential Information) of this Schedule 2 and Clause 35 (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, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 24.11. Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 24 (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.
- 24.12. The Authority may require the Contractor to terminate a Sub-contract where:
- 24.12.1. the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 15 (Termination) of this Schedule 2;
 - 24.12.2. 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;
 - 24.12.3. 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
 - 24.12.4. the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 24.13;

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

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

24.13.2. 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.

25. PREVENTION OF FRAUD AND BRIBERY

25.1. The Contractor warrants 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:

25.1.1. 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

25.1.2. 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.

25.2. The Contractor shall not during the Term:

25.2.1. commit a Prohibited Act; and/or

25.2.2. 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.

25.3. The Contractor shall during the Term:

25.3.1. 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;

25.3.2. keep appropriate records of its compliance with its obligations under Clause 25.3.1 (Prevention of Fraud and Bribery) of this schedule 2 and make such records available to the Authority on request;

25.3.3. 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

25.3.4. 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.

25.4. The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 25.1 (Prevention of Fraud and Bribery) of this schedule 2 or has reason to believe that it has or any of the Contractor Personnel has:

- 25.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 25.4.2. 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
 - 25.4.3. 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.
- 25.5. If the Contractor makes a notification to the Authority pursuant to Clause 25.4 (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 12 (Records Retention and Right of Audit) of this schedule 2.
- 25.6. If the Contractor breaches Clause 25.1 (Prevention of Fraud and Bribery) of this schedule 2, the Authority may by notice:
- 25.6.1. 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
 - 25.6.2. immediately terminate the Contract pursuant to Clause 15.2.1(a) (Termination) of this schedule 2.
- 25.7. Any notice served by the Authority under Clause 25.6 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).

26. CONFIDENTIAL INFORMATION

- 26.1. For the purposes of this Clause 26 (Confidential Information), the term:
- 26.1.1. **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information; and
 - 26.1.2. **"Recipient"** shall mean the Party which receives or obtains directly Confidential Information.
- 26.2. Except to the extent set out in this Clause 26 (Confidential Information) or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
- 26.2.1. 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);
 - 26.2.2. 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;
 - 26.2.3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
 - 26.2.4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 26.3. Clause 26.1 of this schedule 2 shall not apply to the extent that:

- 26.3.1. Law requires such disclosure by the Party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
 - 26.3.2. 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;
 - 26.3.3. 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;
 - 26.3.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 26.3.5. it is independently developed without access to the other Party's Confidential Information.
- 26.4. 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.
- 26.5. 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.
- 26.6. 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.
- 26.7. 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.
- 26.8. The Authority may disclose the Confidential Information of the Contractor:
- 26.8.1. on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 26.8.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 26.8.3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 26.8.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 26.8.1 of this schedule 2 including any benchmarking organisation for any purpose relating to or connected with the Contract;
 - 26.8.5. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - 26.8.6. 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 26 (Confidential Information).

- 26.9. Nothing in this Clause 26 (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.
- 26.10. Failure by the Contractor to comply with any of its obligations under this Clause 26 (Confidential Information) shall be an irremediable material breach of this Contract and the Authority shall be entitled to terminate the Contract pursuant to Clause 15.2.1(a) (Termination) of this schedule 2.

27. FREEDOM OF INFORMATION ACT

- 27.1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
- 27.1.1. 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;
 - 27.1.2. 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;
 - 27.1.3. 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
 - 27.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 27.2. 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.
- 27.3. The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 12 (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.
- 27.4. The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 12 (Records Retention and Right of Audit) of this schedule 2.

28. TRANSPARENCY

- 28.1. 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 28 (Transparency) in order to assist the Authority with its compliance with its obligations under that PPN.

- 28.2. The Parties agree and acknowledge that the content of this Contract is not Confidential Information, except for:
- 28.2.1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - 28.2.2. Commercially Sensitive Information.
- 28.3. 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.
- 28.4. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

29. SUSTAINABILITY

- 29.1. 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) (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.
- 29.2. 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.
- 29.3. The Contractor shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 29 (Sustainability) within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

Equality and Accessibility

- 29.4. The Contractor shall use its reasonable endeavours to 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:
- 29.4.1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010 ; and
 - 29.4.2. 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.

Modern Slavery, Child Labour and Inhumane Treatment

- 29.5. The Contractor:
- 29.5.1. shall, and shall procure that each of its Sub-contractors shall, and where the Modern Slavery Act 2015 shall apply, comply with the Modern Slavery Act 2015;
 - 29.5.2. 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;

- 29.5.3. 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;
- 29.5.4. warrants that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 29.5.5. 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.
- 29.5.6. 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.
- 29.5.7. 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;
- 29.5.8. 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;
- 29.5.9. shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph;
- 29.5.10. 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;
- 29.5.11. shall not use or allow child or slave labour to be used by its Sub-contractors; and
- 29.5.12. shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Authority and Modern Slavery Helpline.

Environmental Requirements

- 29.6. The Contractor shall comply in all material respects with all applicable environmental laws, permits and regulations in force in relation to the Contract.
- 29.7. The Contractor shall use its reasonable endeavours to 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>
- 29.8. The Contractor must have a documented management system and controls in place to manage the environmental impacts of delivering the Services.
- 29.9. The Contractor shall ensure that any Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.
- 29.10. In delivering the Services, the Contractor must comply with the Authority's sustainability requirements, to be provided to the Contractor by the Authority.
- 29.11. In performing its obligations under the Contract, the Contractor shall to the reasonable satisfaction of the Authority:

- 29.11.1. 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;
 - 29.11.2. [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;
 - 29.11.3. 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;
 - 29.11.4. 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;
 - 29.11.5. enhance the natural environment and connecting communities with the environment; and
 - 29.11.6. achieve continuous improvement in environmental (and social) performance.
- 29.12. The Contractor shall inform the Authority within seven Working Days in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.

Sustainability

- 29.13. The Contractor shall:
- 29.13.1. Use its reasonable endeavours to 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> and
 - 29.13.2. 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
 - 29.13.3. 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.

29.14. [NOT USED]

30. OFFICIAL SECRETS ACTS AND FINANCE ACT

- 30.1. The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:
- 30.1.1. the Official Secrets Acts 1911 to 1989; and
 - 30.1.2. section 182 of the Finance Act 1989.

- 30.2. 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 30.1 (Official Secrets Acts and Finance Act) of this schedule 2.

31. DISRUPTION

- 31.1. 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.
- 31.2. 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.
- 31.3. 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.
- 31.4. If the Contractor's proposals referred to in Clause 31.3 (Disruption) of this **Error! Reference source not found.** 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.
- 31.5. 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.

32. COMPLAINTS

- 32.1. 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 15 (Termination) of this **Error! Reference source not found..**
- 32.2. 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.
- 32.3. Without prejudice to its right under Clause 7.8 (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.
- 32.4. 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.
- 32.5. In the event that:
- 32.5.1. the Contractor fails to comply with Clause 32.4 (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

- 32.5.2. the Contractor persistently fails to comply with Clause 32.4 (Complaints) of this **Error! Reference source not found.**

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

33. NON-SOLICITATION

- 33.1. 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.
- 33.2. If either the Contractor or the Authority commits any breach of Clause 33.1 (Non-Solicitation) of this **Error! Reference source not found.** 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.

34. HEALTH AND SAFETY

- 34.1. 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.
- 34.2. The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 34.3. 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.
- 34.4. 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.
- 34.5. 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.
- 34.6. 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.
- 34.7. 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.

35. PUBLICITY

- 35.1. The Contractor shall not and shall procure that its Sub-contractors shall not:
- 35.1.1. make any press announcements or publicise the Contract in any way; or
- 35.1.2. use the Authority's name or brand in any promotion or marketing or announcement,
- without the prior written consent of the Authority.

- 35.2. 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.
- 35.3. The provisions of this Clause 35 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

36. GENERAL

Relationship of the Parties

- 36.1. 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

- 36.2. 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.
- 36.3. 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 23 (Notice) of this **Error! Reference source not found..**
- 36.4. 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

- 36.5. 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

- 36.6. 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

- 36.7. 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 36.536.7 (Entire Agreement) shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

Further assurances

- 36.8. 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

- 36.9. 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 36.9 (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

- 36.10. 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.
- 36.11. Subject to Clause 18 (Dispute Resolution) of this **Error! Reference source not found.**schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

Schedule 3

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

“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”	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: <ul 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”	not used
“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;

“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”	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”	<p>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:</p> <ul style="list-style-type: none"> a. was public knowledge at the time of disclosure (otherwise than by breach of Clause 26 (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 Key Provisions schedule 1 for the full and proper performance by the Contractor of its obligations under the Contract which shall include any adjustment to the Contract Price upon an extension of the Term;
“Contract Year”	<p>means:</p> <ul style="list-style-type: none"> a. a period of 12 Months commencing on the Commencement Date; or

- b. thereafter a period of 12 Months commencing on each anniversary of the 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 Breach”, “Data Protection Officer”	take the meaning given in the GDPR;
“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“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 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;

“Default”	<p>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:</p> <ol style="list-style-type: none"> 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”	<p>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;</p>
“End User”	<p>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);</p>
“Environmental Information Regulations”	<p>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;</p>
“Equality Legislation”	<p>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;</p>
“Existing IPRs”	<p>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);</p>
“Exit Day”	<p>shall have the meaning in the European Union (Withdrawal) Act 2018;</p>
“Expiry Date”	<p>means the date upon which the Contract shall end as specified in the Key Provisions;</p>
“FOIA”	<p>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;</p>
“Force Majeure Event”	<p>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</p>

	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;
“Halifax Abuse Principle”	if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Impact Assessment”	<p>an assessment of the impact of a Variation request, compelled in good faith, including:</p> <ol style="list-style-type: none"> 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.
“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”	<p>includes:</p> <ol style="list-style-type: none"> 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;

“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;

“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;

“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;

"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 Key Provisions or as notified to the Supplier by the Authority;

"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;

“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 Error! Reference source not found. (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”	not used
“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 Error! Reference source not found. (Specification);
“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 Key Provisions.

“Step-In Rights”	not used;
“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”	Not used
“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 Error! Reference source not found. (Term) of Schedule 1) 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;
“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”	Not used
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Voluntary, Community and Social Enterprise” or “VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Worker”	means any one of the Contractor Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies in respect of the Services;

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

- 1.2. The interpretation and construction of the Contract shall be subject to the following provisions:
 - 1.2.1. words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
 - 1.2.2. words importing the masculine include the feminine and the neuter;
 - 1.2.3. reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
 - 1.2.4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.7. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3. Where 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.
- 1.4. 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.
- 1.5. In entering into this Contract the Authority is acting as part of the Crown.
- 1.6. Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - 1.6.1. 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
 - 1.6.2. 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.