

Framework Agreement for the Provision of Patient Survey Services

NHS Patient Surveys – Approved Contractors

Ref: CQC I&D 038

2nd February 2023

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SECTION 1- FORM OF AGREEMENT

**This Framework Agreement is made on this
2022**

day of

PARTIES:

- (1) **THE CARE QUALITY COMMISSION** of City Gate, Gallowgate, Newcastle upon Tyne NE1 4PA ("the **Authority**");

AND

- (2) **EXPLAIN MARKET RESEARCH LTD** of The Core, Bath Lane, Newcastle Helix, Newcastle upon Tyne, Tyne & Wear, NE4 5TF (registered in England and Wales under number 02880683 whose registered office is The Core, Bath Lane, Newcastle Helix, Newcastle upon Tyne, Tyne & Wear, NE4 5TF (the “**Contractor**”))

(each a “**Party**” and together the “**Parties**”).

WHEREAS

- A The Authority published a contract notice 2022/S 000-017769 on 29th June 2022 on the Find a Tender and Contracts Finder services for the provision of Approved Contractors for the NHS Patient Survey Programme Services (“the **Services**”).
- B Following an invitation to tender for the Services the Contractor submitted a tender on 26th July 2022.
- C On the basis of the Contractor’s tender the Authority selected the Contractor to enter into this agreement (“**Framework Agreement**”) to provide the Services to the Authority and any other contracting authority on a call-off basis in accordance with this agreement.
- D This Framework Agreement sets out the terms and conditions on which the Authority and any other contracting authority may order the Services from the Contractor and on which the Contractor will supply those Services.
- E The Authority hereby appoints the Contractor as a potential provider of the Services. The Contractor shall be eligible to be considered for the award of Orders pursuant to a Call-Off Contract for the Services during the Term. In consideration of the Contractor agreeing to enter into this Framework Agreement and to perform its obligations under it, the Authority agrees to pay and the Contractor agrees to accept on the signing of this Framework Agreement the sum of one (£1.00) pound sterling (receipt of which is hereby acknowledged by the Contractor).

IT IS HEREBY AGREED as follows:

1. TERMS OF AGREEMENT

1.1 The Framework Agreement comprises the following:

Section 1:	Form of Agreement
Section 2:	Terms and Conditions of Framework Agreement
Annexe 1:	Part A: Services
Annexe 1:	Part B: Award Criteria
Annexe 1:	Part C: Award Procedure
Annexe 2:	Order Form
Annexe 3:	Tender Response (Including Pricing Matrix)
Annexe 4:	Management Information
Annexe 5:	Terms and Conditions of Call-Off Contract
Schedule 1:	Change Control
Schedule 2:	Non-Disclosure Agreement
Schedule 3:	Contractor and Third Party Software
Schedule 4:	Security Requirements
Schedule 5:	Deed of Guarantee Template
Schedule 6:	Exit Management Strategy
Schedule 7:	Key Performance Indicators
Schedule 8:	Business Continuity and Disaster Recovery Plan
Schedule 9:	Mobilisation Plan
Schedule 10:	Processing, Personal Data and Data Subjects
[Schedule 11:	Mini Tender Response]

1.2 The Framework Agreement starts on 2nd February 2023 and ends on 1st February 2025 (the “**End Date**”) the “**Initial Period**”¹ unless it is terminated early or extended in accordance with the Terms and Conditions of Framework Agreement.

1.3 The Authority may extend the term of the Framework Agreement until 1st February 2027 (“**Extension**”). The Authority may, by giving written notice to the Contractor not less than the three (3) Months prior to the last day of the Initial Contract Period, extend the Framework Agreement for further periods of up to a further 12 Months on each occasion. The total Contract Period shall not exceed four years. The Terms and Conditions of Framework Agreement will apply throughout the period of any Extension.

¹ DN: Intended to be two years to match the initial term of the Survey Co-ordination Centre contract.

GENERAL PROVISIONS

1 DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires the following terms shall have the meanings given to them below or in the clause, annexe or schedule in which they are referred to:

“Approval” means the prior written consent of the Authority;

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations to the Framework Agreement;

“Award Criteria” means the criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“Call-Off Contract” means a legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services between a Customer and the Contractor comprising an Order Form and the Call-Off Terms;

“Call-Off Terms” means the terms and conditions set out in Annexe 5;

“CCN” means a change control notice in the form set out in Schedule 1 (Change Control);

“Commencement Date” means the date set out in paragraph 1.2 of the Form of Agreement;

“Commercially Sensitive Information” means the information listed in Part B of Annexe 3:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in Part B of Annexe 3; and/or
- (b) that constitutes a trade secret;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought 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 or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of Clause 19;
- (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 Notice” means the notice published on Find a Tender <https://www.gov.uk/find-tender> and Contracts Finder <https://www.gov.uk/contracts-finder> by the Authority for the provision of Services;

“Contract Period” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Framework Agreement in accordance with the Law or this Framework Agreement;

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations;

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Customer” means any contracting authority listed as a potential customer of the Contractor in the Contract Notice;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;

“DPA 2018” means the Data Protection Act 2018;

“Data Protection Legislation” means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

“Data Protection Impact Assessment” means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;

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

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Framework Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Framework Agreement and in respect of which such Party is liable to the other;

“Direct Award Criteria” means the award criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“Direct Ordering Procedure” means the ordering procedure set out in Part C of Annexe 1 to be used in the award of Call-Off Contracts;

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“End Date” means the date this Framework Agreement comes to an end;

“Extension” means the extension of this Framework Agreement in accordance with paragraph 1.3 of the Form of Agreement;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that 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;

“Form of Agreement” means section 1 of the Framework Agreement setting out the Parties recitals and order of documents constituting this Framework Agreement;

“Framework Agreement” means this framework agreement together with its Annexes;

“Further Competition Award Criteria” means the criteria in set out Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“Further Competition Procedure” means the procedure in set out Part C of Annexe 1 to be used in the award of Call-Off Contracts;

“Information” has the meaning given under section 84 of the FOIA;

“Initial Period” means the period from the Commencement Date to the End Date of this Framework Agreement;

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Joint Controllers” takes the meaning given in Article 26 of the UK GDPR;

“Key Performance Indicators” means the key performance indicators set out in the Specification and a Key Performance Indicator (“**KPI**”) shall mean any one of them;

“Key Personnel” mean those persons named in the Specification as key personnel;

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor or Processor is bound to comply;

“Law Enforcement Processing” means processing under Part 3 of the DPA 2018;

“Loss” means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **“Losses”** shall be construed accordingly;

“Management Information” means the management information specified in Annexe 4;

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which a Contracting Authority would otherwise derive from:

- (a) a substantial portion of the Framework Agreement; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10 of the Call-Off Contract;

“Month” means calendar month;

“NAO” means the National Audit Office;

“Order” means an order for Services sent by a Customer to the Contractor in accordance with the award procedure set out in clause 5.

“Order Form” means a document setting out details of an Order substantially in the form set out in Annexe 2 or as otherwise agreed in accordance with clause 5;

“Pricing Matrix” means the pricing matrix set out in Annexe 3 (Tender Response (Including Pricing Matrix));

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Customer under the Call-Off Contract for the full and proper performance by the Contractor of its obligations under the Contract;

“Processing” has the meaning given to it in the Data Protection Legislation but, for the purposes of the Framework Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

“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 Framework Agreement;

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or a Customer 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) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Framework Agreement;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority; or a Customer
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK;

“Protective Measures” means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, 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 such measures adopted by it including those outlined in Schedule 10 (Processing Personal Data);

“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 Annexe 1 Part A (Services);

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102);

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen 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 this Framework Agreement or any other affairs of the Authority;

“Request for Information” means a request for information under the FOIA or the EIR;

“Services” means the services set out in the Specification including any modified or alternative services;

“Services Requirement” means the requirements of the Authority or any Customer (as appropriate) for the Services from time to time;

“Statement of Requirements” means a statement issued by the Authority or any Customer detailing its Services Requirements as set out in Annexe 1 and issued in accordance with the Direct Ordering Procedure in detailed in Part C of Annex 1;

“Statement of Work” means the Contractor’s developed statement of work setting out its proposals in respect of the Customer’s Statement of Requirements as required pursuant to Annexe 1 – Part C: Award Procedure;

“Specification” means the description of the Services to be supplied under the Framework Agreement as set out in Annexe 1 Part A (Services) including, where appropriate, the Key Personnel, the Premises and the Quality Standards;

“Staff” means all persons employed by the Contractor to perform its obligations under the Framework Agreement together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement;

“Sub-processor” means any third party appointed to process Personal Data on behalf of that Processor related to this Framework Agreement;

“Tender” means the Authority’s invitation to supply to contractors consisting of the Specification, these clauses and form of letter of engagement;

“Tender Response” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services appended hereto in Annex 3;

“UK GDPR” means the UK General Data Protection Regulation;

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Framework Agreement;

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London; and

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer” shall each have the same meaning given in the UK GDPR.

In this Framework Agreement, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Framework Agreement are references to the Framework Agreement as amended from time to time.

2. TERM OF AGREEMENT

- 2.1 The Framework Agreement commences on the Commencement Date and (unless it is terminated early or extended in accordance with the Framework Agreement shall end on the End Date.

3. SCOPE OF THE AGREEMENT

- 3.1 The Framework Agreement governs the relationship between a Customer and the Contractor in respect of the provision of the Services by the Contractor to a Customer.
- 3.2 Customers may order the Services from the Contractor in accordance with the procedure in clause 5.
- 3.3 If there is any conflict between the Framework Agreement and the Call-Off Contract, the conflict shall be resolved according to the following order of priority:
- 3.3.1 the Call-Off Terms;
 - 3.3.2 the Order Form; and
 - 3.3.3 the Framework Agreement.

4. NON-EXCLUSIVITY

- 4.1 The Contractor acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Authority and Customers for Services from the Contractor and that the Authority and Customers are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

5. CALL-OFF CONTRACT AWARD PROCEDURE

- 5.1 If the Authority or a Customer requires Services, the Authority or the Customer shall award its Services Requirements in accordance with the Award Procedure detailed in Part C of Annexe 1.

6. RESPONSIBILITY FOR AWARDS

- 6.1 The Contractor acknowledges that each Customer is independently responsible for its award of Call-off Contracts and that the Authority has no liability for:
- 6.1.1 the conduct of any Customer (except the Authority) in relation to the Framework Agreement; or

- 6.1.2 the performance or non-performance of any Call-Off Contracts between the Contractor and any Customer (except the Authority).

7. WARRANTIES AND REPRESENTATIONS

- 7.1 The Contractor warrants and represents to the Authority and to other Customers that:
 - 7.1.1 it has full capacity and authority to enter into and perform its obligations under the Framework Agreement and any Call-Off Contract;
 - 7.1.2 the Framework Agreement is executed by a duly authorised representative of the Contractor;
 - 7.1.3 it has not committed and will not commit any Prohibited Act by entering into the Framework Agreement or any Call-Off Contract;
 - 7.1.4 all information, statements and representations contained in its tender for the Services are true and accurate and not misleading;
 - 7.1.5 no claim is being asserted and no litigation or similar action is being taken against it that might affect its ability to provide its obligations under the Framework Agreement or any Call-Off Contract;
 - 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under the Framework Agreement and any Call-Off Contract which may be entered into with the Authority or any other Customer;
 - 7.1.7 no proceedings or other steps have been taken and not discharged (or, 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;
 - 7.1.8 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under the Framework Agreement or any Call-Off Contract; and
 - 7.1.9 from the commencement date of any Call-Off Contract it shall have all necessary licences, authorisations, consents or permits and shall be fully compliant with all applicable law in supplying the Services.

8. PERFORMANCE

- 8.1 The Contractor shall perform all Call-Off Contracts in accordance with the requirements of the Framework Agreement and the Call-Off Contract (to include, without limitation, the Framework Agreement KPIs).
- 8.2 If reasonably requested to do so by the Authority, the Contractor shall cooperate fully with any Customer in providing the Services and with other suppliers engaged by the Customer.

9. PRICES FOR SERVICES

- 9.1 The prices set out in the Pricing Matrix shall apply to any Services ordered pursuant to the Framework Agreement, subject to the prices agreed by the Customer and Contractor through a Further Competition Procedure.
- 9.2 The Authority is not liable to the Contractor or any other Customer for payment or otherwise in respect of any Services provided by the Contractor to any other Customer.

10. STATUTORY REQUIREMENTS

- 10.1 The Contractor shall obtain all licences, authorisations, consents or permits required in relation to the performance of the Framework Agreement and any Call-Off Contract.

11. TRANSFER AND SUB-CONTRACTING

- 11.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the Authority's prior written consent.
- 11.2 The Contractor shall not be entitled to sub-contract any of its rights or obligations under the Framework Agreement.
- 11.3 The Authority may:
 - 11.3.1 assign, novate or otherwise dispose of its right and obligations under the Framework Agreement or any part thereof to any other Customer; or
 - 11.3.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under the Framework Agreement.

12. VARIATIONS TO THE AGREEMENT

- 12.1 Any variations to the Framework Agreement, a Call-Off Contract or an Order Form must be made in accordance with the change control notice procedure set out in the Call-Off Contract using the form in Schedule 1.

13. RIGHTS OF THIRD PARTIES

- 13.1 A person who is not a Party shall have no right to enforce any provision of the Framework Agreement which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause 13 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.

14. ENTIRE AGREEMENT

- 14.1 The Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with therein. The Framework Agreement 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 14 shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

15. TERMINATION AND SUSPENSION

- 15.1 The Authority may terminate the Framework Agreement by serving written notice on the Contractor with immediate effect if:
- 15.1.1 the Contractor commits a Material Breach and:
- i) it has not remedied the Material Breach to the Authority's satisfaction within 20 Working Days or such other period as may be specified by the Authority after issue of a written notice specifying the Material Breach and requesting it to be remedied; or
 - ii) the Material Breach is not, in the Authority's reasonable opinion, capable of remedy;
- 15.1.2 there is a material detrimental change in the Contractor's financial standing and/or credit rating which adversely affects the Contractor's ability to supply the Services.
- 15.2 The Authority may terminate the Framework Agreement by giving 3 months' written notice to the Contractor.

- 15.3 The Contractor may terminate the Framework Agreement by giving 3 months' written notice to the Authority.
- 15.4 Without prejudice to the Authority's rights to terminate the Framework Agreement pursuant to clauses 15.1 and 15.2, if a right to terminate the Framework Agreement arises in accordance with clauses 15.1 or 15.2, the Authority may suspend the Framework Agreement with regard to any part of the Services by giving notice in writing to the Contractor and upon expiry of the notice, the Contractor shall not be eligible for Further Competitions.
- 15.5 If the Authority suspends the Framework Agreement in accordance with clause 15.4 the Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.
- 15.6 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-Off Contract.
- 15.7 Termination or expiry of the Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Framework Agreement prior to termination or expiry.

16. DISPUTES

- 16.1 If a dispute arises out of or in connection with the Framework Agreement (a "**Dispute**") either Party shall give to the other Party a written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**").
- 16.2 On service of a Dispute Notice, the Parties shall in good faith attempt to resolve the Dispute within 20 Working Days of the date of the Dispute Notice and if they cannot do so they shall consider and use a process of alternative dispute resolution which is appropriate for the Dispute and to which they both agree (the "**Dispute Resolution Procedure**").
- 16.3 Neither Party may commence any court proceedings against the other Party in connection with a Dispute until 60 Working Days after the date of the Dispute Notice provided that the right to issue proceedings is not prejudiced by a delay.

17. REPORTS, MEETINGS AND FRAMEWORK PERFORMANCE

- 17.1 If requested by the Authority:
- 17.1.1 the Contractor shall submit Management Information to the Authority throughout the term of the Framework Agreement in any form reasonably required by the Authority during the Contract Period and thereafter in respect of any ongoing Call-Off Contract; and

- 17.1.2 the Parties shall meet and discuss the Management Information.
- 17.2 The Authority may:
- 17.2.1 share the Management Information supplied by the Contractor with any other Customer; and
 - 17.2.2 change the scope of Management Information and shall give the Contractor at least one month's written notice of any change.
- 17.3 The Contractor shall report its performance under the Framework Agreement against the Key Performance Indicators set out in the Specification, providing all management and reporting information listed in the Specification at such intervals as specified.
- 17.4 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- 17.5 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority may carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Customer; whether the Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- 17.6 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- 17.7 The Authority may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Framework Agreement.
- 17.8 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- 17.9 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- 17.10 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Framework Agreement identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority or the Customers.

- 17.11 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause 17.10 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may either in accordance with clause 15.1:
- 17.11.1 suspend the Framework Agreement with regard to any part or all of the Services by giving notice in writing to the Contractor and upon expiry of the notice, the Contractor shall not be eligible for Further Competitions; and/or
 - 17.11.2 terminate the Framework Agreement immediately on notice to the Contractor.

18. RECORDS AND AUDITS

- 18.1 The Contractor shall keep and maintain for 6 years after the date of termination or expiry (whichever is the earlier) of the Framework Agreement accurate records and accounts of the operation of the Framework Agreement including the Services provided under it, any Call-Off Contracts and the amounts paid by each Customer.
- 18.2 The Contractor shall keep the records and accounts referred to in clause 18.1 in accordance with good accountancy practice.
- 18.3 The Contractor shall afford the Authority and the NAO access to such records and accounts as may be required from time to time.
- 18.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the term of the Framework Agreement and for a period of 6 years after expiry of the Framework Agreement to the Authority (or relevant Customer) and the NAO.
- 18.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services; save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the NAO is outside of the Authority's control.
- 18.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the NAO with all reasonable co-operation and assistance in relation to each Audit, including:
- 18.6.1 all information requested by the NAO within the scope of the Audit;
 - 18.6.2 reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
 - 18.6.3 access to its staff.
- 18.7 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 18, unless the Audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

19. CONFIDENTIALITY

- 19.1 Subject to clause 19.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 19.2 Clause 19.1 shall not apply to any disclosure of information:
- 19.2.1 required by any applicable law, provided that clause 21.1 shall apply to any disclosures required under the FOIA or the EIR;
 - 19.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under the Framework Agreement;
 - 19.2.3 that is reasonably required by other Customers;
 - 19.2.4 if a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;
 - 19.2.5 by the Authority of any document to which it is a party and which the Parties to the Framework Agreement have agreed contains no Confidential Information;
 - 19.2.6 to enable a determination to be made under clause 16;
 - 19.2.7 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
 - 19.2.8 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
 - 19.2.9 by the Authority relating to the Framework Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

20 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

Status of the Controller

- 20.1 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 Framework Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) "Controller" (where the other Party acts as the "Processor");

- (b) “Processor” (where the other Party acts as the “Controller”);
- (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 10 (Processing Personal Data) which scenario or scenarios are intended to apply under this Framework Agreement.

Where on Party is Controller and the other Party is Processor

- 20.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 10 (Processing Personal Data) by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- 20.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 20.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
 - (a) process that Personal Data only in accordance with Schedule 10 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the::
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Framework Agreement (and in particular Schedule 10 (Processing Personal Data));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 19 (Confidentiality) and Schedule 4 (Security Requirements);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Framework Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the UK, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under Data Protection Legislation by providing an appropriate 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
 - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Framework Agreement unless the Processor is required by Law to retain the Personal Data.

20.6 Subject to Clause 20.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);

- (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 20.7 The Processor's obligation to notify under Clause 20.6 shall include the provision of further information to the Controller in phases, as details become available.
- 20.8 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 24.6 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 20.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 20.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 20.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 20.12 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 20 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 20.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 20.15 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 Processor amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 20.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Framework Agreement, the Parties shall implement Clauses that are necessary to comply with Data Protection Legislation based on the terms set out in Annex 1 to Schedule 10 (Processing Personal Data).

Where the Parties are Independent Controllers of Personal Data

- 20.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 20.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 20.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 20.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 20.20 The Parties shall only provide Personal Data to each other:

- (a) to the extent necessary to perform the respective obligations under this Framework Agreement;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 10 (Processing Personal Data).
- 20.21 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in the Data Protection Legislation.
- 20.22 A Party processing Personal Data for the purposes of this Framework Agreement shall maintain a record of its processing activities in accordance with Data Protection Legislation and shall make the record available to the other Party upon reasonable request.
- 20.23 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Framework Agreement (“the **Request Recipient**”):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 20.24 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Framework Agreement and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;

- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 20.25 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Framework Agreement as specified in Schedule 10 (Processing Personal Data).
- 20.26 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Framework Agreement which is specified in Schedule 10 (Processing Personal Data).
- 20.27 Notwithstanding the general application of Clauses 20.2 to 20.15 to Personal Data, where the Contractor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 20.16 to 20.26.

21. FREEDOM OF INFORMATION

- 21.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.
- 21.2 The Contractor shall and shall procure that its subcontractors shall:
 - 21.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
 - 21.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 21.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 21.3 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 21.4 The Contractor acknowledges that the Authority may (acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, 4 July 2018) (Code)) be obliged under the FOIA or the EIR to disclose Information:

21.4.1 without consulting with the Contractor; or

21.4.2 following consultation with the Contractor and having taken its views into account

provided always that where Clause 21.4.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

21.5 The Contractor shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

21.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 21.3.

22. PUBLICITY

22.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise the Framework Agreement in any way without the Authority's prior written consent.

22.2 The Authority may publicise the Framework Agreement in accordance with any legal obligation on the Authority including any examination of the Framework Agreement by the NAO or otherwise.

22.3 The Contractor shall not do anything that may damage the Authority's reputation or bring the Authority into disrepute.

23. PREVENTION OF BRIBERY

23.1 The Contractor:

23.1.1 shall not, and shall procure that its staff and all sub-contractor personnel shall not, in connection with the Framework Agreement and any Call-Off Contract commit a Prohibited Act; and

23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by a Customer, or that an agreement has been reached to that effect, in connection with the execution of the Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of the Framework Agreement.

23.2 The Contractor shall:

- 23.2.1 if requested by a Customer, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- 23.2.2 within 60 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this Clause 23 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 23.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to Customers) to prevent its staff and sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 23.4 If any breach of Clause 23.1 is suspected or known, the Contractor must notify the Authority immediately.
- 23.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of this Clause 23 the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.
- 23.6 The Authority may terminate the Framework Agreement by written notice with immediate effect if the Contractor, its staff or sub-contractors (in all cases whether or not acting with the Contractor's knowledge) breaches Clause 23.1.
- 23.7 Any notice of termination under Clause 23.6 must specify:
- 23.7.1 the nature of the Prohibited Act;
- 23.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
- 23.7.3 the date on which the Framework Agreement will terminate.
- 23.8 Notwithstanding Clause 16, any dispute relating to:
- 23.8.1 the interpretation of this Clause 23 or
- 23.8.2 the amount or value of any gift, consideration or commission
- shall be determined by the Authority and its decision shall be final and conclusive.
- 23.9 Any termination under this Clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

24. GOVERNING LAW

- 24.1 The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 24.2 The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

BY SIGNING AND RETURNING THIS FRAMEWORK AGREEMENT THE CONTRACTOR AGREES to comply with all the terms of this legally binding Framework Agreement.

IN WITNESS of which this Contract has been duly executed by the parties.

SIGNED for and on behalf of **CARE QUALITY COMMISSION**

Authorised Signatory:

SIGNED for and on behalf of **EXPLAIN MARKET RESEARCH LTD**

Authorised Signatory 1:

Authorised Signatory 2:

ANNEXE 1 – PART A: SERVICES



CQC reference: CQC I&D 038

NHS PATIENT SURVEY PROGRAMME TENDER EXERCISE

STATEMENT OF REQUIREMENTS

APPROVED CONTRACTOR FRAMEWORK AGREEMENT

Statement of Requirements

Tender Ref: CQC I&D 038

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Section A – Statement of Requirements- Approved Contractor Framework Agreement

1. Background

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. Our purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage care services to improve. To deliver this we assess and regulate services to make sure they meet fundamental standards of quality and safety, and we publish what we find, including performance ratings, to help people make care choices.

As part of a [new strategy](#) published in 2021, CQC is committing to putting people's experiences at the heart of regulation, regulating smarter and accelerating existing improvements in care. We are also going to be assessing the care provided by local systems and increasing our focus on inequalities in care.

CQC collects, analyses and uses a range of data about people's experiences of care. A significant volume of that information comes from people who have recently used NHS services and are asked about their experiences as part of the NHS Patient Survey Programme delivered by CQC (see definitions below regarding the National Survey). The programme is designed to systematically capture the views of representative samples of patients from all eligible NHS trusts in England. Each survey contains questions that are designed and tested to provide insight into fundamental aspects of people's experiences and to highlight areas where individual Care Providers and systems could improve how they provide services.

The programme currently includes annual surveys of adult inpatients and community mental health services. CQC also undertakes three acute surveys on a biennial schedule: maternity services, urgent and emergency department services and children's and young people's inpatient and day case services. Information on all of these surveys are available on the websites stated below.

Typically, the surveys are sent to a sample of between 850 – 1,250 patients per Care Provider, who meet specific eligibility criteria. The sample is drawn from people who have experienced care in a specified month, or months, and on average between 25% and 50% of eligible patients respond.

The results of these surveys, including local and national reports, are published on CQC's own [website](#) and [NHS Surveys](#), along with the guidance and tools used to deliver the survey.

Supporting CQC's commitment to increase the use of people's experiences at the centre of regulation, it is likely adjuncts to the NHS Patient Survey Programme will emerge over the life of this Framework Agreement.

2. Strategic Direction

The Survey Programme is part way through transitioning from solely paper-based methods of administration, to using an online first approach supplemented with SMS reminders. During this next strategic cycle, we will continue to improve surveys through maximising gains from more effective administration methods, while also focusing on:

- Increasing the value and impact of data for data users (prioritising Care Providers and CQC but also considering improved value across the health system, to patients, the public and wider users).
- Considering methodological and process improvements to increase efficiency, timeliness and utility of surveys.
- Ensuring data supports improvements in care.

Timeliness of data capture and dissemination will become an area of increased focus over the lifespan of this Framework Agreement. The Research Team that oversee the Survey Programme on behalf of CQC, will over time assume responsibility for additional research activities that may impact on the range of services we ask contractors to supply.

3. Definitions

CQC wants to ensure that its surveys continuously improve and reflect the way health and social care services are delivered. We will do this by developing national surveys and undertaking on-going development or a substantive review of existing methods.

For the purposes of this procurement, CQC defines the following terms as:

- **“National Survey”**: A data collection of the experiences of those who use services, undertaken at all relevant sites at the same time and using the same tools and methodology to ensure comparability across Care Providers. Samples are sufficiently robust to draw conclusions about experiences of care at a local and national level without the need for further investigation.
- **“Co-ordination Centre”**: CQC is seeking to appoint a Survey Co-ordination Centre Supplier (through a separate procurement process) to develop and deliver CQC’s NHS Patient Survey Programme. The Co-ordination Centre Supplier will work with the CQC, as a partner, delivering innovation and improvement, as well as ensuring the delivery of surveys or related research through, for example, the development of guidance documentation, sampling checks and analysis. This document refers to this service as the ‘Co-ordination Centre’ throughout and Approved Contractors will be expected to work with the Co-ordination Centre to deliver its work. Further details are outlined in section 5 below.

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- **“Approved Contractor”**: CQC is seeking to appoint a number of Approved Contractors to work directly, on Call-Off Contracts, with Commissioners registered with CQC to deliver surveys and related research projects. The Approved Contractor will ensure that Care Providers are able to undertake surveys in line with guidance and schedules issues by the Coordination Centre and ensure that Commissioners are able to complete survey-related products such as pilots, surveys or other specific work.
- **“Care Providers”**: providers of care services that are registered with the CQC and will be reviewed and assessed as part of the National Survey. In the future, this may expand to include organisations within the independent health and social care sectors, as required.
- **“Commissioners”**: are predominantly NHS organisations, the CQC and the CQC’s Survey Coordination Centre contractor. However, this may expand to include organisations within the independent health and social care sectors, as required.

4. Approved Contractor Framework Agreement

CQC is seeking to appoint a number of Approved Contractors to work with and provide a range of survey-related services to Commissioners when contracted to do so. In the future it is possible Approved Contractors would be invited to supply other research related activities alongside this work, in the event that such activities are developed.

Approved Contractors will be required to work, under Call- Off Contracts, directly with Care Providers registered with CQC and on occasion, with the Coordination Centre or CQC directly. The purpose of Approved Contractors is to:

- ensure that Care Providers are able to undertake National Surveys by providing the required skills and expertise to draw samples, distribute and collect questionnaires using a variety of survey administration modes (currently paper and online and incorporating SMS reminders) as per standardised schedules, guidance and in line with national approvals;
- process collected data to allow own analysis of results on behalf of Commissioners (in line with CQC data cleaning and analysis standards and national approvals) and to submit timely and accurate data to the Coordination Centre at required intervals to permit centralised analysis;
- ensure potential safeguarding issues are escalated to the appropriate authorities at the earliest opportunity;

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- ensure that CQC is able to pilot approaches to improving surveys, and undertake other specific work as required over the life of the Framework Agreement;
- work in partnership with CQC and the Co-ordination Centre to seek to continually improve the NHS Patient Survey Programme.

As this is a Framework Agreement, CQC does not guarantee any work through this Framework Agreement and requirements may be called-off as and when required.

CQC will select those bidders that best meet the evaluation criteria outlined in Section B below. CQC reserves the rights to set a maximum number of Approved Contractors depending on the market response to the procurement but will use the scores derived from evaluation to determine the exact number of selected contractors.

5. Anticipated Volumes of Work & Cost Envelope

CQC's strategy for the NHS Patient Survey Programme sees us continue to explore online first methods of delivery wherever possible, supplementing paper-based invitations with SMS reminders. Over time wherever possible we would like to facilitate ever increasing online response – non-response bias permitting and under our current models, Approved Contractors should be able to offer their own, high quality, online questionnaire that is identical to that requested or offered by the Coordination Centre. If this is not possible, a future state will see us revisit the use of one centralised online survey instrument.

Approved Contractors will work with the Survey Co-ordination Centre to ensure the continued delivery of the paper-based survey programme and the online first approach to delivering National Surveys and associated work. We will also focus on maximising the value and impact of data, which will include exploring efficiencies and timeliness of delivery.

Framework Agreement Duration

Anticipated Start Date	Initial Term	Extension Provisions
02 February 2023	01 February 2025	Up to a maximum of 2 years (01 February 2027)

Cost Envelope

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While CQC recognises that costs will vary depending on the scope of the contracts set with Care Providers locally, costs per survey are expected to be between £2,500 and £5,000 per survey per Care Provider.

During the initial two years, the anticipated value of the Framework Agreement, based on approximately 8 surveys with a range of Care Providers eligible to participate is expected to be between circa £2.2m and circa £4.4m.

Please note: as this Framework Agreement will operate on a “call-off” basis (i.e. work requirements will be called off as and when required) CQC does not guarantee any work either from Care Providers or other Commissioners through this Framework Agreement and requirements may be called-off as and when required.

Our current expectations about the NHS Patient Survey Programme delivered via the Approved Contractor Framework Agreement includes:

- Continued development and delivery of an online first approach for **two annual** National Surveys (adult inpatient and community mental health) and **two biennial** surveys (maternity and urgent and emergency care). In each case the surveys will be subject to on-going development and delivery of the survey and employ the use of SMS reminders alongside paper invitations as long as this method is deemed optimal. Facility for respondents to call a helpline and complete via telephone should also remain and improvements to these methods will be made over time.
- Development and delivery of a paper- based approach for the Children and Young People’s survey on a biennial rotation every **two** years, if current piloting suggests it is not possible to change mode.
- Up to **one** pilot a year to allow CQC to maximise response rates, representativeness or timeliness, improve our products and tools, or develop the programme in line with our strategy.

It is also possible, that to support CQC’s strategic focus on increasing the volume and use of people’s experience in regulation we consider other survey and primary research activities, supporting CQC’s ability to assess and regulate services are delivered through this Framework Agreement in the future.

All works detailed will include the delivery of digital and paper questionnaires and the tools and methods for their dissemination, collection, cleaning and analysis. Sample information, including mobile telephone numbers, will also need to be collected to support this process. Where paper

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materials are produced (cover letters in particular) presentation of these will become more important than present and there will be a focus on making these as engaging as possible including, for example, continuing the use of colour.

The existing programme is predominately delivered across NHS organisations. However, this could expand in the future to include Care Providers within the Independent Health and social care sectors as required.

The table below provides an indicative outline of the NHS Patient Survey Programme with current timetabling commitments:

Table 1: NHS Patient Survey Programme – indicative timings

Survey	Questionnaire Development	Fieldwork	Reporting
Acute inpatient survey (annual)	May to January	January to May	August/September
Community Mental Health Survey (annual)	November to May	July to October	January
Children and Young People's Inpatient and Day Case (biennial)	February to December	January to March	August/ September
Maternity Survey (biennial)	June to March	April to August	December
Urgent and Emergency Care Survey (biennial)	February to July	November to February	June

6. Detailed Requirements

Commissioners will use the Framework Agreement to commission services for a range of surveys. Commissioners may also use the Framework Agreement to commission parts of a survey, specific

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pilot work or other primary research activities as needed. Commissioners may also wish to contract services that are only paper based, as with our existing method, and/or all, or aspects of digital services as required.

Approved Contractors will be required to provide the services listed below.

Support. Approved Contractors must provide practical support and advice in the undertaking of surveys of people's experiences of care. This must be in line with any guidance provided by CQC or its Co-ordination Centre or best practice where such guidance is not provided. This support must include ensuring all processes are implemented to survey schedules and will yield timely and high-quality data. Services will include:

- Providing general survey-related support and advice to Care Providers. This must include, but is not limited to, standardised advice on what is required in the undertaking of NHS Patient Surveys or collecting feedback including associated timescales; and attendance on any necessary groups and boards established by the Care Provider. This must also include ensuring Care Providers are aware of particular points at which there are risks to timeliness including delivering samples on time and that support is delivered to mitigate challenges to achieving these timelines.
- Ensuring that all survey materials and questionnaires are high quality and as per standardised materials, and are launched into field on time and at the start of fieldwork as set by CQC or its Co-ordination Centre. Also ensuring the duration between sample checking/ clearance and mail outs; individuals mail outs, interim data submission or other forms of communication with sampled patients adhere to relevant guidance.
- Ensuring online surveys follow design, content and functionality requirements set by the Coordination Centre or consider linkage with any centralised online questionnaire.
- Providing FREEPHONE and email helplines to respond to the questions and concerns of those undertaking National Surveys or the collection of feedback; those responding to questionnaires; and the public as needed.
- Logging contact through the survey FREEPHONE and email helplines including, but not limited to: details of individual contacts (including, but not limited to, who the contact was with, day and time of the contact, overall theme of the contact, content of contact, response provided, who provided the response, further actions required, and whether the call was closed).
- The themes and logs of contacts should be sufficiently detailed to allow a review of trends in contacts to be undertaken. This could support, for

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example, the development of guidance or standardised responses to common questions and an understanding, for example, of numbers of questionnaires completed over the phone, translation services required etc. Anonymised details from these logs should be made available to at the end of each survey or as required.

- Ensure that all stages associated with supporting Care Providers are completed in a timely manner and in line with any guidance supplied by the Commissioners.
- Support CQC and the Survey Coordination Centre with information and ideas to enable improvement in methodology and processes across the programme.
- **Sampling.** Approved Contractors must work with and support Care Providers to draw a survey sample. The Approved Contractor must:
 - work closely with Care Providers to draw a survey sample against specific criteria. This could include samples or lists of people who have used, or otherwise experienced services;
 - follow all guidance and templates issued by the commissioner in relation to this process. This also includes any requirements set out either by the Confidentiality Advisory Group of the Health Research Authority, ethics committees or similar bodies. All Approved Contractors must ensure that they have processes and procedures in place to limit the likelihood of breaches to any approval;
 - manage this process to ensure that derived samples are sufficiently robust for the purposes that they are being used. This must include thoroughly checking samples locally and supporting trusts to re-draw samples until a final draft sample is drawn;
 - liaise with the Co-ordination Centre to raise concerns or queries on the selecting of samples and ensuring the quality of those samples as needed;
 - submit samples or respondent lists to the commissioner or its Co-ordination Centre, as required by (and in line with) provided guidance and schedules, to be checked before they are used;
 - provide the commissioner or its Co-ordination Centre with appropriate assurance that all samples or respondent lists have been collected in accordance with any guidance, data protection and confidentiality requirements;
 - consider all samples/lists, and their content, as confidential and ensure the

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data will only be stored, shared, used and deleted as directed within guidance or as separately requested by CQC or its Co-ordination Centre in writing;

- ensure that all stages associated with sampling are completed in a timely manner and in line with any guidance supplied by the commissioner or its Co-ordination Centre.
- **Questionnaire and information dissemination.** Approved Contractors must work with, and support, Care Providers to ensure that questionnaires and appropriate information are delivered to all potential respondents. Approved Contractors must:
 - ensure that Care Providers and potential respondents have any pre-collection communication, flyers, leaflets and materials needed to advertise the collection of experience information. This will include any materials to advise respondents of how their information is managed in relation to confidentiality and information governance;
 - print all paper- based documents and materials required to send questionnaire packs to respondents including a reply- paid return envelope as requested. This will include materials to issue reminders for response as required by any published guidance. Materials to be in colour as specified;
 - access and use electronic documents and materials required to send questionnaires to respondents. This will include materials to issue reminders for response as required by any published guidance;
 - consider all samples/lists, and their content, as confidential and the data will only be stored, shared, used and deleted as directed within guidance or as separately requested by the commissioner;
 - meet all stationary costs (including but not limited to letters, envelopes and, reminders) to disseminate any letters, questionnaires and any subsequent reminders;
 - meet costs of disseminating text message reminders (or similar) unless undertaken centrally;
 - adhere to all mailing, and materials specifications outlined in any guidance, including timings. This will include guidance on, for example, the use of trust headed paper or logos and personalising all communication;
 - meet all postage and courier costs for sending postal questionnaires and reminders and the costs for establishing and operating any online questionnaires. Minimal costs for the distribution of any electronic materials may also be met although CQC may develop these materials centrally so that

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they can be accessed and used by Approved Contractors;

- provide the commissioner with appropriate assurance that all questionnaire development and dissemination has been undertaken in accordance with any guidance, data protection and confidentiality requirements. Assurance will be sought in line with CQC's own [Quality Assurance Framework Agreement](#); and
 - ensure that all stages associated with questionnaire development, printing, mailing and invitation dissemination are completed in a timely manner and in line with any guidance timing supplied by the commissioner. Where delays or errors are incurred these should be reported to the commissioner or its Co-ordination Centre as appropriate, and actions to prevent similar delays implemented for future surveys.
- **Receipt of information, cleaning and transfer.** Approved Contractors must receive, log and capture all responses to questionnaires as outlined in guidance issued by the commissioner or its Co-ordination Centre. Data must be checked and cleaned as necessary by the Approved Contractor or, as where stated in guidance to the Approved Contractor, raw data must be transferred to the commissioner or its Co-ordination Centre as required. The Approved Contractor must:
 - generate a log of mailing outcomes. This should be sufficiently detailed, for example, to provide information and dates about when a questionnaire has been received, where a questionnaire is undelivered, where a respondent opts out, where partially completed questionnaires are returned, or where a respondent has died. It should accurately record whether questionnaires are blank or completed to ensure weekly outcome figures can be used to assess the impact of each mailing;
 - inform the commissioner or Co-ordination Centre, as directed in guidance, about progress during fieldwork stages. For National Surveys this will be a minimum of each week using a standardised form;
 - liaise with trusts about survey responses as required including non-respondents to support the issuing of reminders and the identification of any issues with contact information data quality at that stage;
 - have in place stringent data quality controls for data checking and entry to ensure the accuracy of the data collected;
 - submit, as stated in guidance, raw datasets to the commissioner or the Co-ordination Centre for all National Survey data. Raw dataset shall mean data that has been entered verbatim from completed questionnaires without any editing taking place to remove contradictory or inappropriate responses.

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Interim datasets are required to be submitted during fieldwork as per Coordination guidance;

- send core data for the National Surveys (identification code, demographic non-sensitive data and response data) to CQC's Co-ordination Centre in a specified format including all sample information as instructed in written guidance along with the responses of individuals. This information will be sent in a secure format as directed by the commissioner or the Co-ordination Centre;
 - consider all samples, and their content, as confidential. The data will only be stored, shared, used and deleted as directed within guidance or as separately requested by the commissioner or its Co-ordination Centre in writing;
 - transfer data in a secure way to ensure the confidentiality and security of the data. Approved Contractors must undertake all transfers of data in line with guidance which may include, for example, using appropriate encryption and password protection and submitting via FTP or API, and requirements for data to be removed as required by [relevant approvals](#);
 - provide the commissioner or its Co-ordination Centre with appropriate assurance that all information has been received, cleaned and transferred in accordance with any guidance, data protection and confidentiality requirements;
 - ensure that all stages associated with the receipt, cleaning or transfer of data are completed in a timely manner and in line with any guidance supplied by the commissioner or the Co-ordination Centre;
 - Ensure potential safeguarding concerns identified in any materials are shared with the social care department at the appropriate local authority, and simultaneously shared with CQC with confirmation of escalation.
- **Analysis, reporting and publicising.** Approved Contractors will undertake any appropriate analysis or reporting requested by Care Providers as part of its contract with the Approved Contractor or separately requested by CQC or Co-ordination Centre. Such analysis must be in line with best practice and stated survey requirements, to ensure the integrity of the programme and compliance with national approvals and assurances of confidentiality. Approved Contractors must:
 - undertake any additional analysis required for the Care Providers that it has contracted with as agreed. This must not deviate from suppression thresholds set to protect confidentiality and agreed with national approval bodies;
 - undertake any basic analysis and reporting as required by CQC to support our

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understanding and use of all feedback from those who use services, and to develop survey methodologies and processes;

- support the publicising of the surveys both pre-questionnaire and post-publication;
- provide the commissioner or its Co-ordination Centre with appropriate assurance that all analysis and reporting required by the commissioner or its Co-ordination Centre has been undertaken in accordance with any guidance, data protection and confidentiality requirements;
- ensure that all stages associated with the receipt, cleaning or transfer of data are completed in a timely manner and in line with any guidance supplied by the commissioner or Co-ordination Centre,

The Approved Contractor will ensure that local and national data is protected and that confidentiality requirements and publication embargoes are maintained.

- **Governance.** In addition to the above, Approved Contractors are asked to work with CQC and its Co-ordination Centre to support, develop and deliver the programme as required. The Approved Contractor must:
 - attend all briefings and meetings as required by CQC or the Co-ordination Centre. Frequency will be directed by the number and frequency of surveys but will be a minimum of once per year at a Programme level. Attendance at survey launch events/ webinars is also essential;
 - supply appropriate details of the volume, scope and value of contracts with Care Providers, breaches in confidentiality and security, and other information as required by the commissioner or its Co-ordination Centre to ensure the continued quality of the Approved Contractors within the Framework Agreement;
 - inform the commissioner or its Co-ordination Centre, as stated in any guidance, of all breaches to data security, confidentiality or governance within 24 hours of any breach being identified.

Commissioners may also use the Framework Agreement to commission other types of primary research including:

- **Feedback.** The distribution, collection, analysis and reporting of other non-survey research related activity for CQC or its Co-ordination Centre.

7. Authority Responsibilities

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CQC's Survey Team will:

- appoint a Service/Contract Manager to manage the contract and act as a primary contact for all contractual matters;
- set the strategic direction for the NHS Patient Survey Programme and will set individual requirements for the number of work packages;
- work with Approved Contractors to manage the delivery of the NHS Patient Survey Programme in line with set timelines and guidance;
- develop and communicate any quality assurance requirements to ensure that all tools and services are delivered to a high standard; and
- ensure that clear guidance is developed and made available to Approved Contractors for development and delivery of the survey programme.

8. Contractor Responsibilities

Each Approved Contractor must:

- appoint a person as the main point of contact for any queries in relation to the management or monitoring of the contract. This will include performance against any key performance indicators as set out below;
- attend all briefings and meetings as required by the commissioner or its Co-ordination Centre. Frequency will be directed by the number and frequency of surveys but will be a minimum of once per year at Programme level, and once per survey;
- provide information on progress to the commissioner and its Co-ordination Centre as required. This will include, but is not limited to, information on response rates during fieldwork or feedback to inform decisions around methodology or responsive action;
- supply appropriate management information including details of the volume and scope of contracts with Care Providers, including volumes of work bid for, to ensure the continued quality of the Approved Contractors within the Framework Agreement;
- undertake evaluation and quality assurance on its work to provide the commissioner or its Co-ordination Centre with sufficient assurance that its work meets required quality standards and learns from experience;
- adhere to all requirements outlined by the Confidentiality Advisory Group of the Health

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Research Authority and any other body involved in approving the survey. Approved Contractors will also adhere to the security requirements set in the Approved Contractor's Framework Agreement. Where breaches to confidentiality or data protection occur they must be raised with the commissioner or its Co-ordination Centre immediately and followed with any action plans and learning needed to ensure that similar future breaches do not occur;

- have met the standards of the NHS Data Security and Protection Toolkit. Each Approved Contractor must also be listed on the Data Protection Register for the purposes of research and adhere to all conditions and agreements made between the CAG and CQC, and
- deliver all of its work in a timely manner and in line with any guidance supplied by the commissioner or its Co-ordination Centre.

Each Approved Contractor must be able to demonstrate compliance with the General Data Protection Regulation. As part of this obligation, approved Contractors are expected to:

- maintain records of data processing activities and ensure information relating to the fair processing of data is available in a clear, concise and understandable way. Privacy Notices should include mention of surveys undertaken for the NPSP, to include detail on how data is held, used, stored and retained as set out in the legislation, and summarised by the [Information Commissioner's Office guide to the GDPR](#);
- have appropriate governance measures in place to support compliance with GDPR. This can include having data protection policies, data protection impact assessments, codes of conducts and a Data Protection Officer in order to clearly document and account for how data is processed;
- have appropriate technical and organisational measures in place to ensure the security of data storage and processing, that data is not accessed unlawfully, and is protected against accidental loss or destruction;
- be able to provide the data controller (Commissioning organisation) with sufficient guarantees that the requirements of the GDPR will be met and the rights of data subjects protected. In order to achieve this, the processing of personal data must be governed by a contract. It is expected that model service contracts provided by CQC and The Survey Coordination Centre will fulfil this function. However, should this not be used contracts between Commissioning organisations and Approved Contractors must be GDPR compliant.

CQC reserves the right to audit Approved Contractors on their adherence with these requirements at any time. CQC retains the right to remove any Approved Contractor from the Framework Agreement including where:

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- they not meet the above contractor responsibilities listed above; or
- they do not bid for and undertake work in relation to this Framework Agreement ; or
- they breach any security or confidentiality requirement outlined in guidance.

9. Contract Management and Monitoring

The key personnel involved in the management of this Framework Agreement and subsequent Call-Off Contracts will be as follows:

- **Authority Service/Contract Manager:** This role will be undertaken by the Authority's Principal Researcher. They will manage the contract on a day-to-day basis, and also chair the contract review meeting outlined below. The Authority Service/Contract Manager will also act as the first point of escalation for risks and issues in performance against the KPIs listed below and demonstrating value for money from the contract. The Authority Service/Contract Manager will work with the Authority's Head of Function who is accountable for the survey programme as required as a secondary stage of escalation.
- **Authority Senior Responsible Officer:** The Authority's Director of Data and Insight will be the Senior Responsible Officer (SRO) for this Framework Agreement. They will be the senior supplier and relationship manager for the Authority and the final point of escalation for service related issues.
- **Authority Commercial Contracts Lead:** The Authority's Senior Commercial Contracts Lead will be the primary contact for any commercial matters or contractual issues/disputes.

Approved Contractors will be expected to attend the following meetings:

Meeting Title and Frequency	Purpose
Contract Review Meeting (annually)	<p>To discuss and review the delivery and development of the programme including:</p> <ul style="list-style-type: none"> • review management information (annually and year to date) • review overall performance against the contract, including compliance and achievement of KPIs, and actions needed • review of any risks and issues and any actions identified in previous quarterly meetings • share ideas for potential improvements, opportunities and innovation. <p>This meeting should be attended, as a minimum, by the Authority's Service/Contract Manager, the Authority's Commercial Contracts Lead (if required) and an appropriate lead from the successful tenderer.</p>

10. Key Performance Indicators

Approved Contractors will be expected to deliver services in line with the Key Performance Indicators (KPIs) outlined below. These are the minimum key performance indicators which will be used to measure the success of Call-Off Contracts. KPIs with a * will be monitored through Management Information collected and shared by Approved Contractors on a six monthly basis.

No	Key Performance Indicator	Measurement (TBC)	Threshold
1*	<p>Delivery Timescales</p> <p>Services will be delivered in accordance with agreed timelines as set by the Coordination Centre and in survey instruction materials or at the survey specific briefing. Any deviation/ change must be raised and agreed with the Survey Coordination Centre/ CQC in advance.</p> <p>Services include: sample checking and sample clearance from Care Providers (in line with Survey targets), sample clearance with Survey Co-ordination Centre (in line with Survey</p>	Percentage of services delivered by 21:00 on agreed day within project timetable	98% Critical KPI

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	targets), mailings and SMS dissemination, sharing finalised questionnaire and online questionnaire, and data submission to the Co-ordination Centre.		
2	<p>Continual improvement</p> <p>The Approved Contractor will support innovation and efficiency in support of delivery of the overall programme by submitting two new ideas to improve methodology, delivery or project efficiency at Annual Review each year.</p> <p>Detail to include – type of innovation, benefits of innovation, any cost implications and risks to mitigate.</p>	Number of new ideas shared at Annual Review	100% Critical KPI
3*	<p>Responsiveness of Contractor</p> <p>The Approved Contractor will respond to all queries or requests from the Survey Co-ordination Centre or CQC within two working days. Where requests require detailed consideration appropriate timelines will be agreed within the two day period.</p>	Exception reporting: deviation demonstrates KPIs not met	100% Non critical KPI
4	<p>Security Requirements</p> <p>Services will be delivered in accordance with information security, data protection, UK GDPR, any confidentiality requirements including those agreed with the Confidentiality Advisory Group (CAG). The Approved Contractors will advise CQC or its Co-ordination Centre where any such breach occurs.</p>	Exception reporting: breaches demonstrate KPI not met	100% Critical KPI
5*	<p>Transparency</p> <p>The Approved Contractor will report any deviation from processes or with use of standardised materials or guidance within one</p>	Exception reporting: deviations subsequently discovered not to have	100% Critical KPI

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	week of any error or deviation being detected. The deviations will be those having a material impact on successful delivery of a Survey or research activity.	been reported demonstrate KPI not met	
6	Quality Assurance Processes The Approved Contractor is required to deliver all survey and related outputs to a standard that is in line with guidance and materials issued by the Survey Co-ordination Centre or CQC by V2.	Percentage of outputs accepted without error by Version 2.	98% Critical KPI
7	Accuracy of fieldwork monitoring The Approved Contractor will submit accurate and timely fieldwork monitoring submissions – including correct outcome codes.	Percentage of weekly monitoring submitted by weekly deadline and without error	98% Non critical KPI
8	Care Provider Feedback CQC will contact care providers annually to determine satisfaction with services provided by Approved Contractors.	Percentage of providers satisfied with suppliers quality and responsiveness.	90% satisfaction Critical KPI

The Authority reserves the right to use the performance data associated with this as a means to measure contract and supplier performance and these will be used to determine contract remedy to be applied.

Performance will be scored on a points system, with a failure to meet critical KPIs (3 points) and non-critical (1 point). If a breach of 3 points or more is made over two consecutive time periods (6 monthly) then the supplier will be in breach of contract and remedy applied. This breach can be made up of either 1 critical breach or a number of non-critical breaches or a mixture of the two.

Numbers of points will be used to determine actions needed including a mechanism of “requires action” and or “contract action notices”.

All reports showing adherence to KPIs is to be sent to the Authority’s Service/Contract Manager and discussed in line with the timings outlined above

11. Management Information

As a minimum, Approved Contractors will be expected to provide the following Management

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Information annually. A template will be developed by CQC, with Approved Contractors, to facilitate its collection. All commercially sensitive information will be treated confidentially by CQC and will not be used for any purpose other than the National Survey programme or shared with any other organisation including CQC's Co-ordination Centre.

Name of Report	Description
Financial Report <i>annual collection</i>	A report highlighting your activity of events within the survey programme. This will be based on number of surveys bid for, number of bids won, cost of award.
Services offered <i>annual collection</i>	A report highlighting the range of services your company provides under this Framework Agreement.
Key Performance Indicators <i>annual collection</i>	Provide a report showing compliance with Key Performance Indicators, breaking results down to show compliance against each indicator for each survey commissioned.

The Authority reserve the right to request additional Management Information reports and Approved Contractors are asked to detail any other reports they believe would be beneficial to the Authority.

12. Skills and Knowledge Transfer

Approved Contractors must log any significant decisions and actions undertaken in delivering agreed packages of work to provide a clear audit trail. The audit trail should be sufficient to allow the commissioning authority to respond to any queries made about the work and to use it in the planning, development and delivery of future work to identify learning and risks and issues. This audit trail should also be sufficient for CQC to identify any sampling errors, breaches of confidentiality raised, and limitations within the data.

Approved Contractors must provide CQC or its Co-ordination Centre with the results of evaluation, lessons learned or other review of a work package on completion of that work package.

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All project specific intellectual property rights means Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Framework Agreement will be retained by CQC.

13. Additional Information

Approved Contractors must ensure that their work and its outputs are quality assured to a standard equivalent to [CQC's Assurance Framework Agreement](#). The Framework Agreement requires that data producers make appropriate plans for quality assurance, undertake an agreed review of the quality of its outputs, complete analytical sign off and organisational sign off before it is delivered.

CQC expects that learning and feedback from the quality assurance process is undertaken. Approved Contractors must be able to demonstrate their quality assurance processes and be able to assure CQC that this process is robust and applied in all cases.

Approved Contractors must ensure that their work supports the delivery of all requirements set out in the UK Statistics Authority's [Code of Practice for Official Statistics](#). It is expected that Approved Contractors will provide all necessary support and work to ensure that official statistics produced through the Survey Programme are compliant with the code.

All Approved Contractors will also be expected to ensure adherence to the HM Government Supplier Code of Conduct. For more information please visit:
<https://www.gov.uk/government/publications/supplier-code-of-conduct>

ANNEXE 1 – PART B: AWARD CRITERIA

1. FURTHER COMPETITION AWARD CRITERIA

1.1 The following criteria shall be applied to a Mini Tender submitted through the Further Competition Procedure. The Customer shall set the percentage weightings in accordance with its requirements prior to commencing the Further Competition Procedure.

Criterion	Criterion	Percentage Weightings (or rank order of importance where applicable)
a	Provision of the Services Other sub criteria to be set by the Customer conducting the Further Competition Procedure	to be set by the Customer conducting the Further Competition Procedure
b	Maintaining the Services Other sub criteria to be set by the Customer conducting the Further Competition Procedure	to be set by the Customer conducting the Further Competition Procedure
c	Price	to be set by the Customer conducting the Further Competition Procedure

2. DIRECT AWARD CRITERIA

2.1 The following criteria shall be applied to a Mini Tender in respect of any Services, which a Contractor capable of meeting the Customer's Statement of Requirements, submits during the Direct Award Procedure.

Criterion Number	Criterion - ranked in order of importance
1	Relevance of Services to requirement
2	Contract Price

ANNEXE 1 – PART C: AWARD PROCEDURE

1. If the Authority or any Customer decides to source the Services through the Framework Agreement then it will award its Services Requirements in accordance with the procedure in this Part C of Annexe 1.

2. FURTHER COMPETITION PROCEDURE

2.1. If a Customer: -

- 2.1.1. requires the Contractor to develop a proposals or a solution in respect of such Customer's Services Requirements and/or it is not possible to determine which Contractor is able to provide best value for money; and/or
- 2.1.2. needs to amend or refine the Call-Off Terms and Conditions to reflect its Services Requirements; and/or
- 2.1.3. seeks lower prices than those provided for in the Pricing Matrix or prices for social value or environmental suitability requirements not covered in the Services Requirement,

then the Customer shall comply with Further Competition Procedure set out in paragraph 2.2 – 2.4 below.

2.2. Customer's Obligations

Any Customer ordering Services under the Framework Agreement through a Further Competition Procedure is expected to: -

- 2.2.1. develop a Statement of Requirements setting out its requirements for the Services and identify the Contractors capable of performing the Services;
- 2.2.2. consider the Call-Off Terms and Conditions to ensure that it meets its Services Requirements;
- 2.2.3. invite tenders by conducting a further competition for its Services Requirements in accordance with this Further Competition Procedure: -
 - (a) invite the Contractors to develop a proposed statement of work setting out its proposals in respect of such Customer's Statement of Requirements ("**Statement of Work**") and submit a tender in writing for each specific contract to be awarded by giving written notice by email to the account manager of each Contractor;

- (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
 - (c) keep each tender confidential until the time limit set out in paragraph 2.2.3(b) above has expired.
- 2.2.4. apply the Further Competition Award Criteria to the Contractors' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call-Off Contract for its Service Requirements;
- 2.2.5. on the basis set out above, award its Services Requirements by placing an Order with the successful Contractor in accordance with paragraph 6 which:-
 - (a) states the Services Requirements;
 - (b) states the Statement of Work submitted by the successful Contractor;
 - (c) states the price payable for the Services Requirements in accordance with the tender submitted by the successful Contractor; and
 - (d) incorporates the Call-Off Terms and Conditions applicable to the Services.

2.3. Contractor's Obligations

The Contractor will in writing, by the time and date specified by the Customer in accordance with paragraph 2.2.3 (b), provide the Customer with either:-

- 2.3.1. a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
- 2.3.2. the Statement of Work and full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Contractor submits a Statement of Work, it should include, as a minimum:-
 - (a) email response subject line to comprise unique reference number and Contractor name, so as to clearly identify the Contractor;
 - (b) a brief summary, in the email, stating whether or not the Contractor is bidding for the Statement of Requirements;
 - (c) a proposal covering the Services Requirements; and
 - (d) if required curriculum vitae of Key Personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels.

- 2.3.3. The Contractor shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall be based on the prices as set out in the Pricing Matrix in Annex 3.
- 2.3.4. The Contractor agrees that all tenders submitted by the Contractor in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with the ordering procedure).

2.4. If a Customer can determine that:-

- 2.4.1. its Services Requirements can be met by the Contractors on the Framework Agreement as set out in Annex 1 and
- 2.4.2. all of the terms of the proposed contract are laid down in this Framework Agreement and the Call Off Terms and Conditions do not require amendment or any supplementary terms and conditions;

then the Customer may place an Order in accordance with the Direct Ordering without a Further Competition Procedure set out in paragraph 3 below.

3. DIRECT AWARD ORDERING PROCEDURE

3.1. Any Customer ordering Services under the Framework Agreement without holding a Further Competition Procedure shall:-

- 3.1.1. develop a clear Statement of Requirements setting out its requirements for the Services;
- 3.1.2. apply the Direct Award Criteria to the catalogue of Services for all Contractors capable of meeting the Statement of Requirements in order to establish which of the Contractors provides best value for money;
- 3.1.3. on the basis set out above, award its Services Requirements by placing an Order with the successful Contractor in accordance with clause 6 of the Framework Agreement.

4. NO AWARD

Notwithstanding the fact that the Customer has followed a procedure as set out above in paragraphs 2 or 3, the Customer shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Customer to place any Order for the Services.

5. RESPONSIBILITY FOR AWARDS

The Contractor acknowledges that each Customer is independently responsible for the conduct its award of Call-Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-

- 5.1 the conduct of other Customer in relation to this Framework Agreement; or

- 5.2 the performance or non-performance of any the Call-Off Contracts between the Contractor and Other Contracting Bodies entered into pursuant to this Framework Agreement.

6. FORM OF ORDER

Subject to paragraphs 1 to 5 above, each Customer may place an Order with the Contractor by serving an order in writing in substantially the form set out in Annexe 2 (the “**Order Form**”) or such similar or analogous form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this paragraph 6 shall not constitute an Order under this Framework Agreement. Where the Customer and Contractor agree to use a form of order similar or analogous to the Order Form, the Call-Off Terms shall still apply and no other Contractor’s terms are part of the Call-Off Contract, including any terms written on the back of, added to this order form, or presented at the time of delivery.

7. ACCEPTING AND DECLINING ORDERS

- 7.1 Following receipt of an Order, the Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Customer and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and either:-
- 7.1.1 notify the Customer that it declines to accept the Order; or
 - 7.1.2 notify the relevant Customer that it accepts the Order by signing and returning one copy of the Order Form.
- 7.2 If the Contractor:-
- 7.2.1 notifies the Customer that it declines to accept an Order; or
 - 7.2.2 the time-limit referred to in paragraph 7.1 has expired;
- then the offer from the Customer to the Contractor shall lapse and the Customer may offer that Order to another Contractor that submitted the next economically advantageous tender in accordance with the relevant Award Criteria.
- 7.3 The Contractor in agreeing to accept such an Order pursuant to in paragraph 6 above shall enter a Call-Off Contract with the relevant Customer for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Customer's receipt of the signed Order Form provided by the Contractor pursuant to paragraph 7.1.2.

ANNEXE 2 – ORDER FORM

Customer	
Address	
Contact Ref:	Ref: Phone: E-mail:
Order Number	[To be quoted on all correspondence relating to this Order]
Order Date	

Contractor	
For attention of:	Name: Phone: E-mail:
Address	

1. REQUIREMENTS

(1.1) Services required including any key personnel:

(1.2) Commencement Date:

(1.3) End Date:

(1.4) Key Personnel of the Contractor

(1.5) Quality/Technical/Performance Standards

(1.6) Location(s) at which Services are to be provided:

2. PRICE AND PAYMENTS

(2.1) The Price excluding VAT, payment profile and method of BACS)) []/[Set out in schedule]

[Guidance: Insert details of the Price, payment profile and method of payment. This should not be higher (but can be lower) than the Pricing Matrix set out in Annex 3 to the Framework Agreement.]

(2.2) Invoicing and Payment

The Contractor shall issue invoices [monthly]/[quarterly] in arrears.

[Guidance: if known, specify any additional supporting information which the Contractor should provide with the invoice].

3. COMMERCIALLY SENSITIVE AND CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

[]

[Guidance: Include details of any Commercially Sensitive Information identified by the Contractor and the duration it should be confidential for. This will assist the Authority in respect of compliance with Freedom of Information Act and the section 45 Code published by the Cabinet Office.]

4.LIABILITY

For the purposes of clause G1.4 of the Call-Off Terms and subject to the remainder of clause G1 of the Call-Off Terms the Contractor's total liability shall be limited in aggregate to the greater of:

(a) one million pounds GBP £1,000,000.00; or

(b) one hundred and twenty-five percent (125%) of the total Price total in no event exceed a sum equal to 125% of the Price paid or payable by the Customer to the Contractor for the Services.

5.TERMINATION

For the purposes of clause H3.1 of the Call-Off Terms the Customer may terminate the Call-Off Contract on 30 days' notice to the Contractor.

6.NOTICES

Notices shall be sent to the addresses set out below for the purpose of service of notices under the Call-Off Contract:

For the Customer: Authorised Representative

Contact Name:

Address:

Email:

For the Contractor: Contract Manager

Contact Name:

Address:

Email:

BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in the Order Form, incorporating the Call-Off Terms set out in the Framework Agreement entered into by the Contractor and the Authority on **[INSERT DATE FRAMEWORK SIGNED]**.

For and on behalf of the Contractor:

Signed _____

Name _____

Position _____

Date _____

For and on behalf of the Customer:

Signed _____

Name _____

Position _____

Date _____

ANNEXE 3 – PART A: TENDER RESPONSE (including Pricing Matrix)

CQC I&D 038 – Technical Response Document (Overall Total Weighting = 100%):

This document should be completed and uploaded to the e-Sourcing Portal as outlined in the ITT Document.

This document is to allow Tenderers to respond to the Technical evaluation criteria as set out below. Please ensure you have read and fully understand the Technical requirements.

Any additional marketing material you wish to submit should be uploaded as separate annexes to this document.

You must score 2 or above in all the below evaluation criteria to be considered for this framework.

Evaluation Criteria 1: Strategic Vision

Please describe your organisation's vision for supporting the NHS Patient Survey Programme.

This criterion seeks to establish the Tenderer's vision for the delivery and development of National Surveys.

Evaluation of this criterion will include an assessment of your organisation's views on how CQC could incrementally improve the NHS Patient Survey Programme.

Supporting Attachment Required? No

Scoring mechanism: 0 – 4 as per ITT Table 5

Weighting/Max Score: 10%

Max Word Count: N/A

Evaluation Criteria 1 Bidder Response.

[illegible]

[REDACTED]

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Evaluation Criteria 2: Delivery and Development of Surveys

Please describe (with specific reference to the requirement and the outcomes expected) how your organisation intends to deliver the requirements outlined within the Specification.

This criterion seeks to establish that the Tenderer has the experience and expertise needed to deliver the requirements outlined within the Specification

Evaluation of this criterion will include an assessment of how your organisation intends to deliver and develop surveys in collaboration with CQC. This should outline your approach to ensuring on-going delivery and improvements to the programme.

Supporting Attachment Required? No

Scoring mechanism: 0 – 4 as per ITT Table 5

Weighting/Max Score: 35%

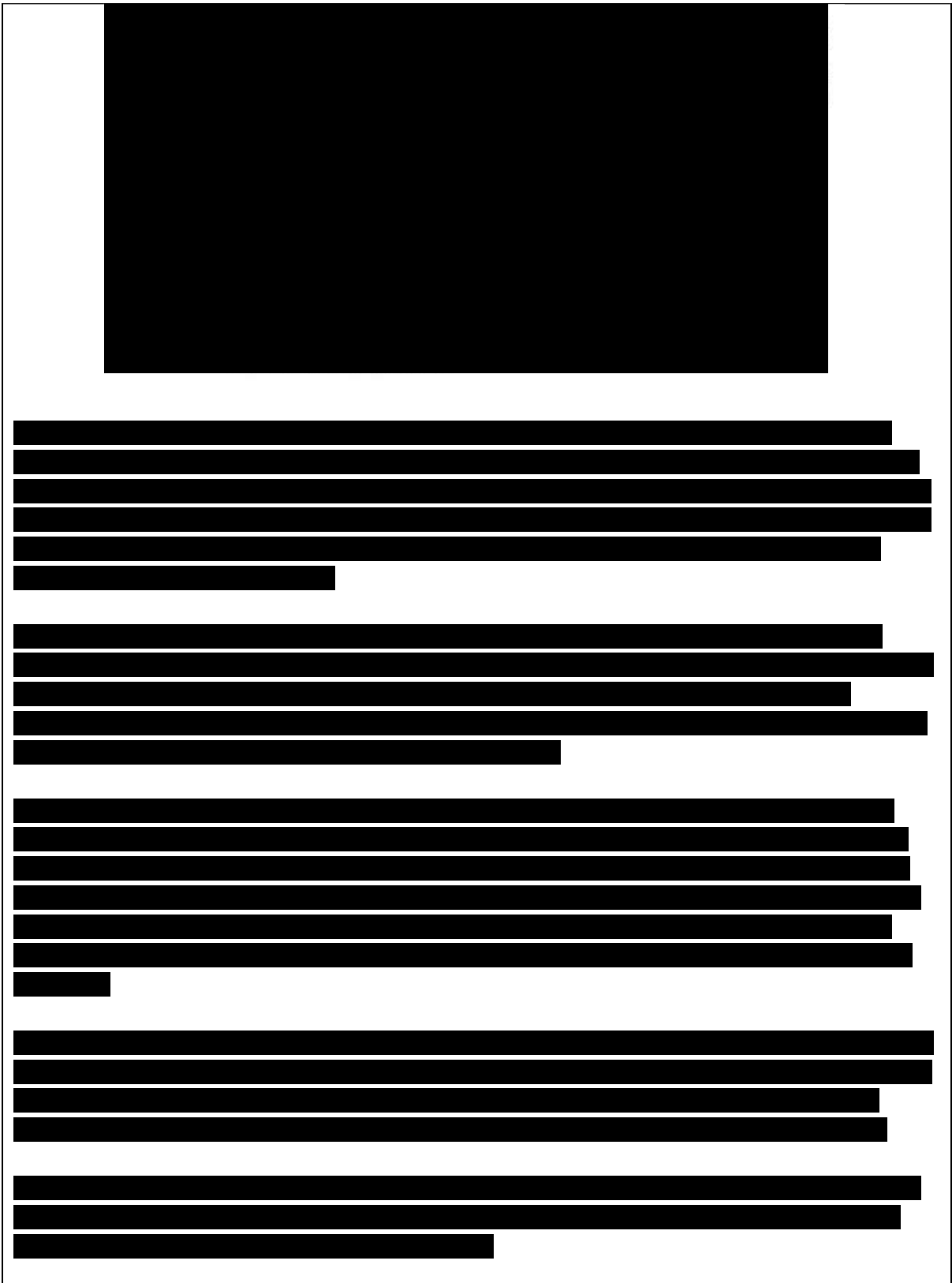
Max Word Count: N/A

Evaluation Criteria 2 Bidder Response.

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Evaluation Criteria 3: Relationship Management

Please provide an assessment of your organisation's approach to working, in partnership, with Commissioning Authorities to ensure the successful delivery of outputs.

This criterion seeks to establish how the Tenderer will work with CQC to ensure successful delivery and to meet expected quality standards.

Evaluation of this criterion will include:

- an assessment of your organisation's approach to working, in partnership, with a Commissioning organisation to ensure the successful delivery the requirements outlined within the Specification.
- how you intend to provide appropriate assurance that the work will be delivered to a high- quality standard and within agreed timescales and budgets.
- an assessment of your approach to the management of risks and issues in developing and delivering this work and the information governance arrangements you will put in place to support delivery.

Supporting Attachment Required? No

Scoring mechanism: 0 – 4 as per ITT Table 5

Weighting/Max Score: 25%

Max Word Count: N/A

Evaluation Criteria 3 Bidder Response.

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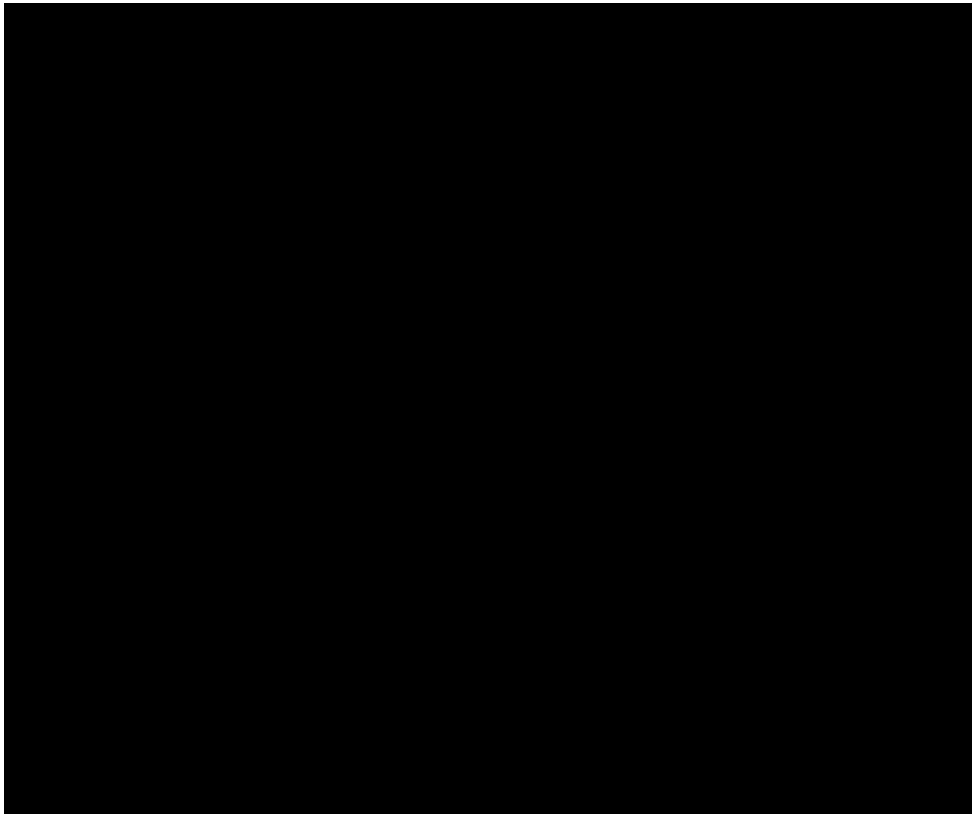
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Evaluation Criteria 4: Experience and Team

Please provide details of the expertise and experience of key individuals and/or teams whose responsibility will be to ensure that the requirements are delivered.

This criterion seeks to establish that the Tenderer has the resources, expertise and capability to ensure successful delivery of Commissioning Authority requirements. This must include a plan to increase resources as needed for additional work packages that require either additional personnel or additional technical or specialist experience and skills.

Evaluation of this criterion will include an assessment of the team who will deliver the work including the number of FTE posts dedicated to the programme, their grade and experience in delivering similar work within the last three years.

Supporting Attachment Required? Yes

CVs for each team member who will be working on the project directly. Please note that each CV must be limited to 800 words per team member.

Scoring mechanism: 0 – 4 as per ITT Table 5

Weighting/Max Score: 20%

Max Word Count: N/A

Evaluation Criteria 4 Bidder Response.

[Redacted bidder response content]

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Evaluation Criteria 5: Social Value

Please provide details of your organisation's approach to fighting climate change.

This criterion seeks to establish the benefits the Tenderer can bring through their work under the Framework to reducing emissions of greenhouse gases, water usage and waste to landfill. We also want to understand the training provided to staff to influence their behaviours around reducing waste and energy consumption in relation to this Framework.

Supporting Attachment Required? No

Scoring mechanism: 0 – 4 as per ITT Table 5

Weighting/Max Score: 10%

Max Word Count: N/A

Evaluation Criteria 5 Bidder Response.

[Redacted Bidder Response Content]

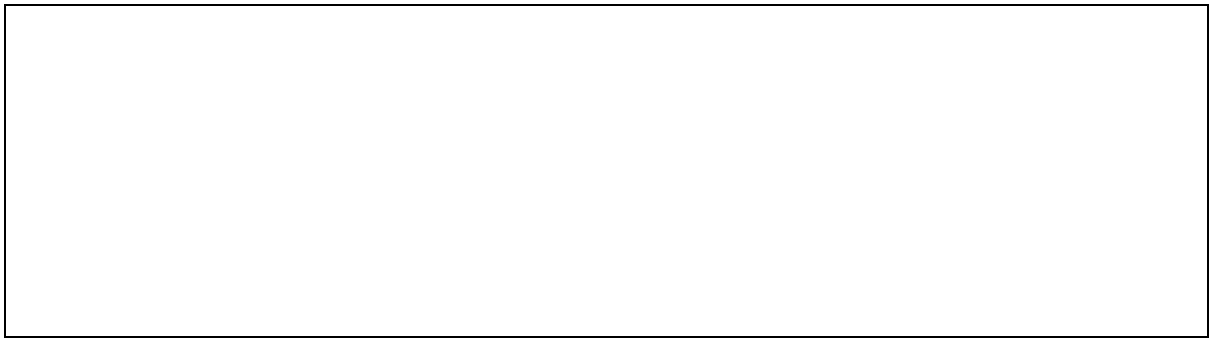
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CQC I&D 038 – Commercial Response Document

This document must be completed and uploaded to the e-Sourcing Portal as outlined in the ITT Document.

The standard terms and conditions of the Care Quality Commission (“CQC”) will apply as a consequence of this process. For the avoidance of doubt, CQC's standard payment terms are thirty (30) days from receipt of valid and undisputed invoice:

All submissions must be based upon these terms:

- All prices shall be fixed and firm for the duration of the contract;
- Include all other charges and overheads associated with the element being priced including travel and subsistence costs;
- All costs must be provided inclusive and exclusive of VAT as outlined in the table below;
- All costs must be stated in Pounds Sterling.

Role Level	Day Rate (Ex. VAT)	Day rate (Inc. VAT)
Director	■	■
Associate Director	■	■
Senior Research Associate	■	■
Research Associate	■	■
Research Assistant	■	■
Administrator	■	■

Tenderers are instructed that the rates provided above should represent the maximum day rates chargeable under the Framework, and these rates are to hold firm for the duration of the Framework.

Please note the volumes are indicative only; CQC reserves the right to change at its discretion

ANNEXE 3 – PART B: COMMERCIALLY SENSITIVE INFORMATION

Please outline in this document any information you deem commercially sensitive.

INFORMATION CONSIDERED CONFIDENTIAL	REASON FOR FOIA EXEMPTION	PERIOD EXEMPTION OF COMMERCIALLY SENSITIVE INFORMATION SOUGHT (Months)
We have nothing to declare that we deem commercially sensitive.		

ANNEXE 4 – MANAGEMENT INFORMATION

- 1.1 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information (“MI”) to the Authority in accordance with the provisions of this Framework Agreement.
- 1.2 The Contractor shall also supply such Management Information as may be required by the Authority in accordance with the terms of a Call-Off Contract.

2. MANAGEMENT INFORMATION AND FORMAT

- 2.1 The Contractor agrees to provide to the Authority:
 - 2.1.1 timely, full, accurate and complete MI Reports which incorporate the data, in the correct format, required by the MI Reporting Template (imbedded document); and
 - 2.1.2 to the extent requested by the Authority, timely, full, accurate and complete data, in such format as the Authority may specify from time to time, in respect of the Services and Call-Off Contracts.
- 2.2 The initial MI Reporting Template is set out in the Annexe 4 of this Framework Agreement. The Authority may from time to time make changes to the MI Reporting Template, including to the data required or format of MI Reports, and issue a replacement version of the MI Reporting Template to the Contractor. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Template is amended by the Authority at any time, then the Contractor agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
- 2.4 The Authority may provide the Contractor with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Contractor agrees to complete each MI Reporting Template in accordance with any such guidance.
- 2.5 The Contractor may not make any amendment to the current MI Reporting Template without Approval.

3. FREQUENCY AND COVERAGE

- 3.1 All MI Reports must be returned to the Authority on or prior to the Reporting Date every Month during the Term and thereafter, until all transactions relating to Call-Off Contracts have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Contractor must report the invoice in October's MI Report and not September's. Each Order received by the Contractor must be reported only once when the Order is received.
- 3.3 The Contractor must provide the Authority with an MI Report for each Month even where there are no orders (including Orders) or transactions to report in the relevant Month; referred to as a **"Nil Return"**.
- 3.4 The Contractor must inform the Authority of any errors or corrections to the Management Information:
 - 3.4.1 in the next MI Report due immediately following discovery of the error by the Contractor; or
 - 3.4.2 as a result of the Authority querying any data contained in an MI Report.

4. SUBMISSION OF THE MONTHLY MI REPORT

- 4.1 To the extent the MI Report is contained in the MI Reporting Template, the completed MI Report shall be completed electronically and returned to the Authority. All other information required to be included in an MI Report shall be returned to the Authority in such manner as the Authority may notify to the Contractor from time to time.
- 4.2 The Authority reserves the right (acting reasonably) to specify that all or any part of an MI Report be submitted by the Contractor using an alternative means of communication to that specified in paragraph 4.1 such as email.

5. DEFECTIVE MANAGEMENT INFORMATION

- 5.1 The Contractor acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework

Agreement because Management Information will be used by the Authority to inform strategic decision making.

MI Failures

5.2 When an MI Report:

5.2.1 contains any material errors or material omissions or a missing mandatory field; or

5.2.2 is submitted in an incorrect format, for example by using an incorrect MI Reporting Template; or

5.2.3 is not submitted by the requisite reporting date (including where a Nil Return should have been filed), then the Authority may deem the failure to submit an MI Report correctly as an **"MI Failure"**.

5.3 Following an MI Failure the Authority may issue reminders to the Contractor or require the Contractor to rectify defects in the MI Report provided to the Authority. The Contractor shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

5.4 The Contractor agrees at the request of the Authority to attend meetings with the Authority in person to discuss the circumstances of any MI Failure(s) (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Contractor shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Contractor's performance.

MI REPORTING TEMPLATE - EXAMPLE

Report Type	What we require	Why do we need this information	Frequency
	Throughout the duration of the Framework Agreement, there will be some specific Management Information (MI) requirements regarding the work contracted. There may also be ad hoc MI requirements throughout the duration of the Call-Off Contract. (Note: Ad hoc MI requirements are irregular requests for additional information).	To provide granular detail of how activity on the framework from the customers	Ad hoc
	The following specific MI must be provided to the CQC by email by annually, upon request.		Monthly

Core MI Information	Ref Number	Field Requirement	Field Response		
	MI 01	Number of tasks awarded in the past month.			
	MI 02	List Task References and Descriptions			
	MI 03	Tasking Authority name (e.g. named individual within CQC with contact details).			
	MI 04	Task start date(s).			
	MI 05	Task finishes date(s), (planned and actual).			
	MI 06	Total man hours for task (per grade).			
	MI 07	Overall task value(s).			

	MI 08	Whether task was won via Direct Award or Competition.				
	MI 09	Task value invoiced per each Task No.				
	MI 10	Whether task was performed at the Contractor's premises or Customer's premises.				

KEY PERFORMANCE INDICATORS

ANNEXE 5 – TERMS AND CONDITIONS OF CALL-OFF CONTRACT

CONTENTS

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Contractor's Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Provision and Removal of Equipment
B3	Manner of Carrying Out the Service
B4	Key Personnel
B5	Contractor's Staff
B6	Inspection of Premises
B7	Licence to Occupy Premises
B8	Property
B9	Offers of Employment
B10	Employment Provisions
C1	Price
C2	Payment and VAT
C3	Recovery of Sums Due
C4	Price during Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Environmental Requirements
D5	Business Continuity and Disaster Recovery
D6	Health and Safety
E1	Authority Data
E2	Data Protection and Privacy
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity, Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights

E9	Audit
E10	Tax Compliance
F1	Failure to meet requirements
F2	Monitoring of Contract Performance
F3	Remedies for inadequate performance
F4	Transfer and Sub-Contracting
F5	Waiver
F6	Variation
F7	Severability
F8	Remedies Cumulative
F9	Entire Agreement
F10	Counterparts
G1	Liability, Indemnity and Insurance
G2	Warranties and Representations
G3	Force Majeure
H1	Termination on Insolvency and Change of Control
H2	Termination on Default
H3	Non-Default Termination or Change of Government Policy
H4	Termination under the Regulations
H5	Consequences of Expiry or Termination
H6	Disruption
H7	Recovery upon Termination
H8	Retendering and Handover
H9	Exit Management
H10	Exit Procedures
H11	Knowledge Retention
I1	Governing Law and Jurisdiction
I2	Dispute Resolution

A DEFINITIONS AND INTERPRETATION

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means 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 with, that body corporate from time to time;

“Approval” and **“Approved”** means the prior written consent of the Customer;

“Authority Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Framework Agreement; or
- (b) any Personal Data for which the Authority is the Data Controller;

“Authorised Representative” means the Customer representative named in the Order Form or at Clause A4.4 as authorised to approve agreed Variations and receive notices under the Call-Off Contract;

“Award Criteria” means the criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees;

“Breach of Security” means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms;

“Call-Off Contract” means a legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services between a Customer and the Contractor comprising an Order Form and the Call-Off Terms;

“Call-Off Terms” means these terms and conditions;

“CCN” means a change control notice in the form set out in Schedule 1(Change Control);

“Commencement Date” means the date set out in paragraph 1.2 of the Order Form;

“Commercially Sensitive Information” means the information listed in the Order Form:

- (c) which is provided by the Contractor to the Customer in confidence for the period set out in the Order Form; and/or
- (d) that constitutes a trade secret;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought 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 or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (e) was public knowledge at the time of disclosure otherwise than by breach of Clause E4;
- (f) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (g) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (h) is independently developed without access to the Confidential Information;

“Contract” means this Call-Off Contract;

“Contract Manager” means the Contractor’s representative named in the Order Form or at Clause A4.4 as authorised to approve agreed Variations and receive notices under the Call-Off Contract;

“Contract Notice” means the notice published on Find a Tender <https://www.gov.uk/find-tender> and Contracts Finder <https://www.gov.uk/contracts-finder> by the Authority for the provision of Services;

“Contract Period” means the period from the Commencement Date to:

- (c) the End Date; or
 - (d) following an Extension, the end date of the Extension,
- or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract;

“Contracting Customer” means any contracting authority (other than the Customer) as defined in regulation 2 of the Regulations;

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 3 (Contractor and Third Party Software);

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Customer System);

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing;

“Customer” means any Contracting Customer listed as a potential customer of the Contractor in the Contract Notice that awards a Call-Off Contract under the Framework Agreement;

“Customer Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Customer; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Customer is the Data Controller;

“Customer Premises” means any premises owned, occupied or controlled by the Customer or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services;

“Customer Software” means software which is owned by or licensed to the Customer (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services;

“Customer System” means the Customer’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Contractor in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Contractor System or which is necessary for the Customer to receive the Services;

“Data Loss Event” means any event that results, or may result, in 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 Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party;

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

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other;

“Direct Award Criteria” means the award criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“Direct Ordering Procedure” means the ordering procedure set out in Part C of Annexe 1 to be used in the award of Call-Off Contracts;

“Disaster” means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan;

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC 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 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992;

“DPA” means the Data Protection Act 2018 and any subordinate legislation made under that 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;

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“End Date” means the date this Contract comes to an end;

“Extension” means an extension of this Contract in accordance with Clause A7;

“Exit Plan” means the plan produced and updated by the Contractor during the Term in accordance with Schedule 6 (Exit Management Strategy);

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure Event” means 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, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain;

“Framework Agreement” means the Framework Agreement together with its Annexes;

“Further Competition Award Criteria” means the criteria in set out Part B of Annexe 1 to be used in the award of Call-Off Contracts;

“Further Competition Procedure” means the procedure in set out Part C of Annexe 1 to be used in the award of Call-Off Contracts;

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

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

“HMRC” means HM Revenue & Customs;

“Information” has the meaning given under section 84 of the FOIA;

“Initial Contract Period” means the period from the Commencement Date to the End Date;

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003;

“Key Personnel” mean those persons named in the Specification as key personnel;

“Key Performance Indicators” means the key performance indicators listed in the Schedule 7 (Key Performance Indicators) and a Key Performance Indicator (**“KPI”**) shall mean any one of them;

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply;

“Loss” means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **“Losses”** shall be construed accordingly;

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Management Information” means the management information specified in Annexe 4 (Management Information);

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which a Contracting Customer would otherwise derive from:

(a) a substantial portion of the Contract; or

- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10;

“Mini Tender” means the Customer’s invitation to supply to contractors consisting of the Specification, these clauses and form of letter of engagement;

“Mini Tender Response” means the document submitted by the Contractor to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 11;

“Month” means calendar month;

“NAO” means the National Audit Office;

“NICs” means National Insurance Contributions;

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Customer on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a relevant Tax Customer 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 the Relevant Tax Customer under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Customer 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;

“Order” means an order for Services sent by a Customer to the Contractor in accordance with the award procedure set out in clause 5 of the Framework Agreement;

“Order Form” means a document setting out details of an Order substantially in the form set out in Annexe 2 or as otherwise agreed in accordance with clause 5 of the Framework Agreement;

“Personal Data” personal data (as defined in the Data Protection Legislation) which is Processed by the Contractor or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Contract;

“Pre-Existing Intellectual Property Rights” shall mean any Intellectual Property Rights vested in or licensed to a Customer or the Contractor prior to or independently of the performance by the Customer of the Contractor of their obligations under this Contract;

“Premises” means the location where the Services are to be supplied as set out in the Specification;

“Pricing Matrix” means the price stated in the Order Form at Annexe 2, which are based on the pricing matrix set out in Annexe 3 (Tender Response (Including Pricing Matrix));

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Customer under the Call-Off Contract for the full and proper performance by the Contractor of its obligations under the Contract;

“Processing” has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

“Prohibited Act” means:

- (e) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or a Customer 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;
- (f) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (g) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Customer; or a Customer;
- (h) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK;

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

“Protective Measures” means appropriate technical and organisational measures which 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 such measures adopted by it;

“Purchase Order” means the document in which the Customer or a Customer specifies the Services which are to be supplied by the Contractor under the Contract;

“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 Annexe 1 Part A (Services);

“Receipt” means the physical or electronic arrival of the invoice at the address given by the Customer or a Customer to the Contractor for the submission of invoices from time to time;

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102);

“Regulator Correspondence” means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract;

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen 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 or any other affairs of the Customer;

“Relevant Conviction” means a conviction that is relevant to the nature of the Services or as listed by the Customer and/or relevant to the work of the Customer;

“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 Customer” means HMRC or, if applicable, a tax Customer in the jurisdiction in which the Contractor is established;

“Replacement Contractor” means any third party supplier appointed by the Customer to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

“Request for Information” means a request for information under the FOIA or the EIR;

“Restricted Countries” means Any country outside the UK.

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period;

“Security Policy” means ISO/IEC 27001 Information Security Management;

“Services” means the services set out in Annexe 1 including any modified or alternative services;

“Services Requirement” means the requirements of the Customer or any Customer (as appropriate) for the Services set out in the Order Form and updated from time to time;

“Statement of Requirements” means a statement issued by the Customer or any Customer detailing its Services Requirements as set out in Annexe 1 and issued in accordance with the Direct Ordering Procedure in detailed in Part C of Annexe 1;

“Specification” means the description of the Services to be supplied under the Contract as set out in Annexe 1 Part A (Services) including, where appropriate, the Key Personnel, the Premises and the Quality Standards;

“SSCBA” means the Social Security Contributions and Benefits Act 1992;

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s employees, officers, directors, servants, agents, consultants, suppliers and Sub-Contractors used or engaged in the performance of its obligations under the Contract;

“Staff Vetting Procedure” means the Customer’s procedures for the vetting of personnel and as advised to the Contractor by the Customer;

“Sub-Contractor” means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and **“Sub-Contract”** shall be construed accordingly;

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

“Supplier Code of Conduct” means HM Government Supplier Code of Conduct dated September 2017;

“Termination Notice” means a written notice delivered by the Customer to the Contractor indicating that it intends to terminate this Contract in accordance with its terms;

“Third Party IP Claim” has the meaning given to it in clause E8.7 (Intellectual Property Rights);

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 3 (Contractor and Third Party Software);

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“TUPE Information” means the information set out in clause B10.1;

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“Valid Invoice” means an invoice containing the information set out in clause C2.5;

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Contract;

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer” shall each have the same meaning given in the Data Protection Legislation.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and

- (h) references to the Contract are references to the Contract as amended from time to time.

A2 The Customer's Obligations

- A2.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, and the exercise by the Customer of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Customer to the Contractor.

A3 Contractor's Status

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Customer.

A4 Notices and Communications

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.
- A4.2 If it is not returned as undelivered a notice served:
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Customer:

Contact Name: [TBC - NAME TO BE INSERTED];

Address: [TBC - ADDRESS TO BE INSERTED]; and

Email: [TBC - E-MAIL ADDRESS TO BE INSERTED].

(b) For the Contractor:

Contact Name: [NAME TO BE INSERTED];

Address: [ADDRESS TO BE INSERTED]; and

Email: [E-MAIL ADDRESS TO BE INSERTED].

A5 Mistakes in Information

- A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Contractor in connection with the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual, perceived or potential conflict of interest, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract (“**Conflict of Interest**”). The Contractor will notify the Customer without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Customer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Customer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Customer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest. The actions of the Customer pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

A7 Term of Contract

- A7.1 The Customer may extend the term of the Contract until [INSERT EXTENSION END DATE] (“**Extension**”). The Customer may, by giving written notice to the Contractor

not less than the three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for further periods of up to a further 12 Months on each occasion. The total Contract Period shall not exceed 2 years. The Call-Off Terms will apply throughout the period of any Extension.

B. THE SERVICES

B1 Specification

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price by the Customer.
- B1.2 The Contractor shall comply fully with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligations in relation to the quality, performance and provision of the Services).
- B1.3 In the event that this Contract or any Purchase Order terminates or expires, the Contractor shall, if requested to do so by the Customer, continue to provide the Services commenced prior to the date of such termination or expiry at no extra cost to the Customer other than the continued payment of the Price for such Services. The Contractor shall comply with its obligations in accordance with all agreed Exit Management processes included within this Contract.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Customer and shall on request be delivered to the Customer as directed by the Customer. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Customer on request and on completion of the Services.

- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Customer's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B3 Manner of Carrying Out the Services

- B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Customer 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.
- B3.2 The Contractor shall ensure that all Staff supplying the Services 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. The Contractor shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Customer in writing when it has completed installation. Following receipt of such notice, the Customer shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
 - (b) reject the installation and inform the Contractor why, in the Customer's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Customer rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Customer's reasonable

opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Customer may terminate the Contract with immediate effect by notice.

- B3.5 The installation shall be complete when the Contractor receives a notice issued by the Customer in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the installation.
- B3.6 During the Contract Period, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
 - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
 - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B3.7 The Contractor and Staff shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/supplier-code-of-conduct>).

B4 Key Personnel

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B4.2 The Contractor shall designate a Key Personnel to act on behalf of the Contract as the Contract Manager to oversee the provision of the Services and liaise and report to the representatives of the Customer.
- B4.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Customer shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made

by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

- B4.5 The Customer may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Customer's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

B5 Contractor's Staff

- B5.1 The Customer may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the Customer's reasonable opinion, be undesirable or if not suitably qualified to carry out the Services.

- B5.2 The Contractor shall ensure that all Staff who have access to the Customer's Premises, the Customer System or the Customer Data have been cleared in accordance with the BPSS.

- B5.3 The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

- B5.4 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Customer's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- B5.5 If the Contractor fails to comply with clause B5.4 within two Months of the date of the request and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, then the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- B5.6 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

- B5.7 The Contractor shall provide all necessary training on a continuing basis for all its Staff employed or engaged in the provision of the Services in compliance with the Specification, the Security Policy and the Security Plan.
- B5.8 The Contractor shall ensure that:
- (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Act 2010 (**“the Equality Legislation”**); and
 - (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B7 Licence to Occupy Premises

- B7.1 Any land or Premises made available from time to time to the Contractor by the Customer in connection with the Call-Off Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Call-Off Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Call-Off Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Call-Off Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- B7.3 Should the Contractor require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake approved modification work without undue delay.
- B7.4 The Contractor shall (and shall ensure that any Staff on the Customer's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Customer's Premises as determined by the Customer
- B7.5 The Call-Off Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Call-Off Contract, the Customer retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

B8 Property

- B8.1 All Property is and shall remain the property of the Customer and the Contractor irrevocably licenses the Customer and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Customer's negligence. The Contractor shall inform the Customer immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter neither party shall employ or make an offer employment to the other party's staff who have been associated with the Services and/or the Call-Off Contract without consent of the other Party.

B10 Employment Provisions

- B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;

- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
 - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B10.2 At intervals determined by the Customer (which shall not be more frequent than once every 30 days) the Contractor shall give the Customer updated TUPE Information.
- B10.3 Each time the Contractor supplies TUPE Information to the Customer it shall warrant its completeness and accuracy and the Customer may assign the benefit of this warranty to any Replacement Contractor.
- B10.4 The Customer may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Customer (both for themselves and any Replacement Contractor) against all Losses and other liabilities which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;

- (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Customer and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date TUPE Information.
- B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.
- B10.8 The Contractor undertakes to the Customer that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
- B10.9 The Contractor acknowledges that the Customer has made no assurance about the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("**TUPE**") and has formed its own view on whether TUPE applies before submitting its Tender Response to supply the Services. The Contractor agrees that the Price shall not be varied on the grounds that TUPE does or does not apply

irrespective of the belief of the Customer or the Contractor prior to execution of the Contract.

- B10.10 The Customer does not accept any responsibility for and gives no warranty in respect of the TUPE information that has been supplied to the Customer by the present Contractor.

C PAYMENT

C1 Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Call-Off Contract, the Customer shall pay the Price in accordance with clause C2 (Payment and VAT).
- C1.2 NOT USED

C2 Payment and VAT

- C2.1 Not used.
- C2.2 The Contractor shall submit invoices to the Customer on the dates set out in the Order Form.
- C2.3 The Customer shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Customer will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Call-Off Contract;
 - (b) the Purchase Order number
- and, if requested by the Customer:**
- (c) timesheets for Staff engaged in providing the Services signed and dated by the Customer's representative on the Premises on the day;

- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
 - (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
 - (f) the date on which work was undertaken;
 - (g) the time spent working by the individuals concerned;
 - (h) details of the type of work undertaken by the individuals concerned;
 - (i) separate identification of time spent travelling and/or meal or rest breaks; and
 - (j) where appropriate, details of journeys made and distances travelled.
- C2.6 The Customer shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Customer shall not pay for plant which is not in use during a meal or rest break.
- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Customer shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Customer and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 NOT USED
- C2.12 The Customer shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Customer shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Customer's instructions).
- C2.14 The Customer shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.

- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Customer pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Customer may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Customer to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Customer shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
- [Please insert details]
- C2.19 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.
- C2.20 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Customer not less than 5 Working Days before the date upon which the tax or other liability is payable by the Customer.
- C2.21 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.22 Any late payment of undisputed invoices by the Customer will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.23 The Customer shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Customer (including any sum which the Contractor is liable to pay

to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Customer under the Contract or under any other agreement with the Customer or the Crown.

- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price during Extension

- C4.1 Subject to Subject to any terms set out in section 2 of the Order Form and/or any Call-Off Contract variations, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

C5 Euro

- C5.1 Not used

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) 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
 - (b) 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.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Customer or any of its 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.
- D1.3 The Contractor shall, during the Contract Period:
- (a) 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; and
 - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Customer on request.
- D1.4 The Contractor shall immediately notify the Customer in writing if it becomes aware that any breach of clauses D1.1 and/or D1.2 has occurred or is likely to occur, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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

- (c) 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 directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Contractor notifies the Customer pursuant to clause D1.4, the Contractor shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Customer may by notice:
 - (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; or
 - (c) recover in full from the Contractor any other Loss sustained by the Customer in consequence of any breach of those clauses.
- D1.7 Any notice served by the Customer under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Customer believes has committed the Prohibited Act and the action that the Customer has taken (including, where relevant, the date on which the Contract shall terminate).
- D1.8 The Contractor shall not offer or give, or agree to give, to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Customer or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.9 The Contractor warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body in connection with the Contract.

D2 Discrimination

- D2.1 The Contractor shall:
 - (a) perform its obligations under the Contract in accordance with:

- i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Customer's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Customer of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

- D3.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

- D4.1 The Contractor shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender. Without prejudice to the generality of the foregoing, the Contractor shall:
- (a) comply with all Policies and/or procedures and requirements set out in the Specification and Tender in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Contractor's supply chain;
 - (b) maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the Services being supplied and as proportionate to the nature and scale of the Contractor's business operations; and
 - (c) maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in clause D4.1(b).

- D4.2 The Contractor shall meet reasonable requests by the Customer for information evidencing the Contractor's compliance with the provisions of this clause D4.

D5 Business Continuity and Disaster Recovery Plan

- D5.1 The Contractor shall comply at all times with the relevant provisions of the Business Continuity and Disaster Recovery Plan to be appended hereto in Schedule 8.
- D5.2 The Business Continuity and Disaster Recovery Plan shall be compliant with the current ISO 22301 code of practice and specification for business continuity management or equivalent. In particular the Business Continuity and Disaster Recovery Plan must show that the Contractor is able to maintain the Services throughout the terms of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.
- D5.3 The Customer further reserves the right to undertake or commission an independent audit of the Business Continuity Plan that is put in place by the Contractor in respect of Services supplied to or on behalf of the Customer.
- D5.4 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:
- (a) implement the Disaster Recovery Plan
 - (b) continue to provide the affected Services to the Customer in accordance with the Disaster Recovery Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- D5.5 To the extent that the Contractor complies fully with the provisions of this clause D5 (and the reason for the declaration of a Disaster was not a breach of any of the other terms of this Contract on the part of the Contractor), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in Schedule 7 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

D6 Health and Safety

- D6.1 The Contractor shall perform its obligations under the Contract in accordance with:
- (a) all applicable Law regarding health and safety (including Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety); and
 - (b) the Customer's health and safety policy while at the Customer's Premises.
- D6.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Customer's Premises of which

it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

E PROTECTION OF INFORMATION

E1 Customer Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- E1.3 To the extent that Customer Data is held and/or Processed by the Contractor, the Contractor shall supply Customer Data to the Customer as requested by the Customer in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data.
- E1.5 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Customer immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- E1.7 If Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
 - (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data and the Contractor shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

E2 Data Protection & Privacy

- E2.1 The Contractor will, in conjunction with the Customer, in its own right and in respect of the Services, shall ensure it will be compliant with the provisions of the Data Protection Legislation.
- E2.2 The Contractor shall designate and will provide the Customer with the contact details of its data protection officer where this position is required by the Data Protection Legislation or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this clause E2.
- E2.3 Notwithstanding the obligations in clause E2.1 if the Contractor is Processing Personal Data as a Data Processor for the Customer, the Contractor shall:
- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Customer provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment (“**DPIA**”). Such assistance may, at the discretion of the Customer include (but not be limited to):
 - i. A systematic description of the envisaged processing operations and the purpose of the processing;
 - ii. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
 - (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in clause E1 (Customer Data) and clause E7 (Security) and Schedule 4 (Security Requirements).
 - (c) Process the Personal Data only in accordance with Schedule 10 and/or written instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Customer unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor’s obligations under the Contract or as is required by Law or any Regulatory Body;

- (e) Keep a record of all categories of processing activities carried out on behalf of the Customer, containing;
 - i) the categories of processing carried out on behalf of the Customer;
 - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- (f) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (g) take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
 - a. do not process Personal Data except in accordance with this Contract (and in particular Schedule 10);
 - b. are aware of and comply with the Contractor's duties under this clause E2 and clauses E1 (Customer Data) and E4 (Confidentiality);
 - c. are subject to appropriate confidentiality undertakings with the Contractor or any relevant Sub-contractor;
 - d. 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 Customer or as otherwise permitted by this Contract; and
 - e. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- (h) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (i) not transfer Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor 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 Customer in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- (j) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Customer within 48 hours if it:
 - a. receives from a Data Subject (or third party on their behalf):
 - i. a Data Subject Access Request (or purported Data Subject Access Request);
 - ii. a request to rectify, block or erase any Personal Data; or
 - iii. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - b. considers that any of the Customer's instructions from the Customer infringe the Data Protection Legislation;
 - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Contract; or
 - d. 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
 - e. is required by Law to commit an act or omission to that would, but for clause E2.10, constitute a breach of this clause E2;
 - f. becomes aware of a Data Loss Event
- (l) The Contractor's obligation to notify under clause E2.3(k) shall include the provision of further information to the Customer in phases, as details become available.

E2.4 Notwithstanding the provisions of clauses E2.1 and E2.3 where the Contractor is Processing Personal Data for the Customer, the parties acknowledge that the Customer is the Data Controller and the Contractor is the Data Processor. The Authority shall set out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and the categories of Data Subject in the form appended hereto in Schedule 10 – Processing, Personal Data and Data Subject.

- E2.5 Taking into account the nature of the processing, the Contractor shall provide the Customer with full co-operation and assistance (within the timescales reasonably required by the Customer) in relation to either Party's obligations under Data Protection Legislation or any complaint, communication or request made as referred to in clause E2.3(k), including by promptly providing:
- a. the Customer with full details and copies of the complaint, communication or request;
 - b. where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - c. the Customer, on its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Customer following any Data Loss Event; and
 - e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Customer with the Information Commissioner's Office;
- E2.6 The Contractor shall, if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause E2 and provide to the Customer copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- E2.7 The Contractor shall allow the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Contractor's Data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- E2.8. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Customer's prior written consent. If, after the Commencement Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the Customer's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Contractor's cost and expense using the Change Control Procedure.
- E2.9 The Contractor will notify the Customer immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the notification will be made regardless as to whether or not the Contractor has established any unauthorised access or other harm has actually arisen from the event. Notification

must not be delayed for the purpose of establishing the effects of an identified Data Loss Event. In particular the Contractor will;

- a. when notifying the Customer of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
- b. Cooperate fully with any Customer investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
- c. provide immediate access to the Contractor's premises and systems for the purposes of any Customer investigation under clause E2.9(b) above;
- d. take all necessary actions to remedy the causes or adverse effects of the Data Loss Event and to ensure the protection of Personal Data from any further loss. Where the contractor reasonably considers that immediate action is required to ensure the protection of personal data, or to prevent or mitigate a serious risk of harm, damage or loss to data subjects arising from a Data Loss Event, they may take such action without requiring prior authorisation from the Customer circumstances where it is not reasonably possible to seek or obtain such authorisation in a timely manner;
- e. not make any public statement of any kind without the prior Approval of the Customer;
- f. where appropriate, provide all assistance necessary to enable the Customer to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and
- g. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

E2.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause E2. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data as referred to in Data Protection Legislation or Personal Data relating to criminal convictions and offences referred to in Data Protection Legislation; and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- E2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- E2.13 The Customer 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).
- E2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E2.15 At the end of the Term or earlier termination of this Contract, at the Customer's request, the Contractor shall delete or return all Personal Data to the Customer and delete any copies of such Personal Data except where required to retain any copies by Law.
- E2.16 The Contractor shall comply at all times with Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- E2.17 The Contractor shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- E2.18 The Contractor shall indemnify the Customer on a continuing basis against any and all Losses incurred by the Customer arising from the Contractor's Default under this clause E2 and/or any failure by the Contractor or any Sub-Contractor to comply with their respective obligations under Data Protection Legislation.
- E2.19 Nothing in this clause E2 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Legislation.
- E2.20 The provision of this clause E2 applies during the Contract Period and indefinitely after its expiry.

E3 Official Secrets Acts and Finance Act

- E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.
- E3.2 The Contractor shall not remove from the Customer's premises any classified or privacy marked material without the Customer's express agreement. The Contractor must keep any such material so removed under conditions approved by the Customer for the housing of such classified or privacy marked material.
- E3.3 In the event that the Contractor or its Staff fails to comply with this clause, the Customer reserves the right to terminate the Call-Off Contract by giving notice in writing to the Contractor.

E4 Confidential Information

- E4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Call-Off Contract is Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Call-Off Contract is exempt from disclosure in accordance with the provisions of FOIA.
- E4.2 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Call-Off Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E4.3 Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives its consent for the Customer to publish the whole Contract (but with any information which is Confidential Information belonging to the Customer redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.4 The Customer may consult with the Contractor to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- E4.5 The Contractor shall assist and cooperate with the Customer to enable the Customer to publish this Call-Off Contract.
- E4.6 If required by the Customer, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 2

(Non-Disclosure Agreement). The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

- E4.7 If requested by the Customer, the Contractor shall give the Customer a copy of the list and, subsequently upon request by the Customer, copies of such of the listed non-disclosure agreements as required by the Customer. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.8 The Contractor may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.9 The Contractor shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- E4.10 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.11 Nothing in clause E4.1 shall prevent the Customer disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Customer's accounts;
 - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (c) to any Crown Body or any Contracting Customer and the Contractor hereby acknowledges that all government departments or Contracting Authorities

receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Customer;

(d) to any consultant, contractor or other person engaged by the Customer

provided that in disclosing information under clauses E4.11 (c) and (d) the Customer discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.12 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.13 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Customer, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Customer's obligations of confidentiality.
- E4.14 If the Contractor does not comply with clauses E4.1 to E4.6 the Customer may terminate the Contract immediately on written notice to the Contractor.
- E4.15 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.16 The Contractor will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Customer in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.17 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Customer's request if the Customer reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

- E5.2 The Contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and the Contractor shall and shall procure that any Sub-Contractors shall:
- (a) give the Customer a copy of all Information in connection with the Contract in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may specify) of the Customer's request;
 - (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIR;
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Customer.
- E5.3 The Customer shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.
- E5.4 The Contractor acknowledges that (notwithstanding the provisions of clause E4) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ('Code'), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services in certain circumstances:
- (a) without consulting the Contractor; or
 - (b) following consultation with the Contractor and having taken their views into account;
- provided always that where clause E5.4(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- E5.5 The Contractor shall ensure that all information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

E6 Publicity, Media and Official Enquiries

- E6.1 Without prejudice to the Customer's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

- E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E7 Security

- E7.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Customer while on the Customer's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- E7.3 The Contractor shall comply, and shall procure compliance of its Staff, with the Security Plan and Security Policy.
- E7.4 The Customer shall notify the Contractor of any changes or proposed changes to the Security Policy.
- E7.5 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT environment.
- E7.6 Notwithstanding clause E7.5, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Customer Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency and the Contractor shall immediately take all reasonable steps necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (d) as soon as reasonably practicable provide the Customer with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

- E7.7 Any cost arising out of the actions of the Parties taken in compliance with clause E7.6 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Customer Data (whilst the Customer Data was under the control of the Contractor); and
 - (b) by the Customer if the Malicious Software originates from the Customer Software or Customer Data (whilst the Customer Data was under the control of the Customer).
- E7.7A The Contractor controlled architecture and environment used to process or store Customer Data will be certified to the National Cyber Security Centre (**NCSC**) Cyber Essentials Plus certification scheme.
- E7.8 The Contractor shall be liable for, and shall indemnify the Customer against all Losses suffered or incurred by the Customer and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Customer).

E8 Intellectual Property Rights

- E8.1 Save as granted elsewhere under this Call-Off Contract, neither the Customer or the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:
- (a) furnished to or made available to the Contractor by or on behalf of the Customer;
 - (b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
 - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the "**IP Materials**")
- shall vest in the Customer and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.
- E8.2 The Contractor hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a

present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

- E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.
- E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Customer.
- E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Customer and the Crown from and against all Losses and other liabilities which the Customer or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:
- (a) items or materials based upon designs supplied by the Customer; or
 - (b) the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Contract.
- E8.6 The Customer shall notify the Contractor in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Customer.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Customer or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Customer on all material issues which arise during the conduct of such litigation and negotiations;
 - (b) take due and proper account of the interests of the Customer; and

- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E8.8 The Customer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Customer under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).
- E8.9 The Customer shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Customer under clauses E8.4 and G2.1(g)) use its best endeavours to:
 - (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customerand if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Customer of the Contractor's notification the Customer may terminate the Contract immediately by notice to the Contractor.
- E8.11 The Contractor grants to the Customer a royalty-free, perpetual, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Customer reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E8A Use of Documents and Information

- E8.1 Except with the consent in writing of the Customer, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

- E8.2 Except with the consent in writing of the Customer the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Customer otherwise than for the purpose of the Contract.
- E8.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Customer for the purposes of the Contract remain the property of the Customer and must be returned on completion of the Contract.
- E8.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E8.5 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- E8.6 To the extent that Customer Data is held and/or processed by the Contractor the Contractor shall supply that Customer Data to the Customer as requested by the Customer in the format specified in the Schedule 4 (Security Requirements).
- E8.7 The Contractor shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- E8.8 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster
- E8.9 Recovery Plan. The Contractor shall ensure that such back-ups are available to the Customer at all times upon request and are delivered to the Customer at no less than three monthly intervals.
- E8.10 The contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- E8.11 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than [ten calendar days]; and/or

- (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.

E8.12 If at any time the Contractor suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

E9 Audit

E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records and processes as may be requested by the Customer in connection with the Contract.

E9.2 The Contractor agrees to make available to the Customer, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3 The Contractor shall permit duly authorised representatives of the Customer and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Customer and for carrying out examinations into the economy, efficiency and effectiveness with which the Customer has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Customer in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Customer:

- i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1A Monitoring of Contract Performance

F1A.1 The Contractor shall comply with the monitoring arrangements set out in the KPI Schedule and the Specification including, but not limited to:

- (a) reporting performance of the Services against the KPIs;
- (b) providing all management and reporting information listed in the Specification at such intervals as specified; and
- (c) providing such other performance data and information as the Contractor may be required to produce by the Customer under the Specification or otherwise under the Contract from time to time.

F1A.2 The Contractor shall measure its performance against the KPIs, and within 7 days of submitting of its claim for payment each Month, the Contractor shall provide the Customer with a performance report setting out the Contractor's performance against all KPIs and the Overall KPI Performance Score in respect of the immediately preceding Month. Where KPI's are only measured quarterly or half yearly they shall be reported in the Month immediately following the relevant quarterly or half yearly performance report date.

F1 Failure to meet Requirements

F1.1 If the Customer informs the Contractor in writing that the Customer reasonably believes that any part of the Services do not meet the requirements of the Call-Off Contract or differs in any way from those requirements, and this is not as a result of a default by the Customer, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Customer.

F2 Monitoring of Contract Performance

F2.1 The Contractor shall immediately inform the Customer if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Customer shall carry out a review of the performance of the Contractor ("**Checkpoint Review**").

Without prejudice to the generality of the foregoing, the Customer may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Customer; whether the Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Customer to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Customer may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Customer's expectations and the Contractor's obligations under this Call-Off Contract.
- F2.5 The Customer shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Customer shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Customer with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Customer's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Customer.

F3 Remedies for inadequate performance

- F3.1 If the Customer reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
 - (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Customer's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

- (c) withhold or reduce payments to the Contractor in such amount as the Customer reasonably deems appropriate in each particular case; and/or
 - (d) terminate the Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Customer 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 Customer 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.
- F3.3 If the Customer reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Customer may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Customer may:
 - (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Customer and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Customer within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor in such amount as the Customer deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Customer.
- F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:
 - (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Customer and to prevent such failure from recurring; and
 - (b) immediately give the Customer such information as the Customer may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Customer.
- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Customer, the Customer may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, novate, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Customer on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Customer on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Customer access to the records then the Customer shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Contractor to the Customer immediately.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Customer incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:
- (a) reduction of any sums in respect of which the Customer exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Customer receiving notification under both clauses F4.6 and F4.7.
- F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- F4.7 The Contractor shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment at least 5 Working Days prior to submission of the relevant invoice.
- F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval of the Customer.

F4.9 Subject to clause F4.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Customer;
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F4.10 Any change in the legal status of the Customer such that it ceases to be a Contracting Customer shall not, subject to clause F4.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Customer.

F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Customer or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Customer (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Customer in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee;
- (b) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F4.12 The Customer may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time

for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F4.14 The Customer shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Customer.

F4.15 Provided that the Customer has given prior written consent, the Contractor shall be entitled to novate the Contract where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Contract;

(b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

F5 Waiver

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F6 Variation

F6.1 If, after the Commencement Date, the Customer's requirements change, the Customer may request a Variation subject to the terms of this clause F6.

F6.2 The Customer may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Customer. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Customer may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed in clause I2 (**Dispute Resolution Procedure**).

F6.4 Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 1 (Change Control) and approved in writing by the Customer.

F6.5 The provisions of clause F6.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Customer. However, the Authorised Representative shall have the right to review such a Variation and require a Change of Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature 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.

F8 Remedies Cumulative

F8.1 Except as expressly provided in 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.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

G1.2A Liability under clauses E2.18 and E7.8 shall be unlimited.

- G1.3 Subject to clause G1.1 and G1.2A the Contractor's aggregate liability in respect of the Contract shall not exceed the sum set out in Section 5 of the Order Form.
- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- G1.5 The Customer may recover from the Contractor the following losses incurred by the Customer to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
 - (d) any compensation or interest paid to a third party by the Customer; and
 - (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
 - (b) indirect, special or consequential loss.
- G1.7 Unless otherwise specified by the Customer, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out 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 policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Contractor shall hold:

- (a) employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
 - (b) public liability with the minimum cover per claim of five million pounds (£5,000,000);
 - (c) product liability with the minimum cover per claim of one million pounds (£1,000,000);
- and
- (d) professional indemnity with the minimum cover per claim of one million pounds (£1,000,000),
or any sum as required by Law unless otherwise agreed with the Customer in writing. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- G1.9 The Contractor shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and Customer and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - (b) in entering the Contract it has not committed any fraud;
 - (c) as at the Commencement Date, all information contained in the Tender Response or other offer made by the Contractor to the Customer remains true,

accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and in addition, that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) 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;
- (f) 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;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
 - i) 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;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - iii) 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 or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

- (l) (if an individual) he is regarded by HM Revenue & Customs as self- employed and accordingly shall indemnify the Customer against tax, national insurance contributions or similar impost for which the Customer may be liable in respect of the Contractor by reason of this Contract.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the 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 the 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.
- G3.2 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.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, 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.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to continue to perform its obligations under the contract and 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.
- G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
 - (c) either Party is prevented from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- G3.7 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 the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional

liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.
- H1.3 The Contractor shall notify the Customer immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“**Change of Control**”). The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,
- but shall not be permitted to terminate where Approval was granted prior to the Change of Control.
- H1.4 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:
- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (b) it is for any reason dissolved; or
 - (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or

- (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
 - (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction.
- H1.5 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) it is for any reason dissolved;
 - (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
 - (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (h) a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
 - (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.
- H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

- H2.1 The Customer may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:
- (a) the Contractor has not remedied the Default to the satisfaction of the Customer within 25 Working Days or such other period as may be specified by the Customer, after issue of a notice specifying the Default and requesting it to be remedied;
 - (b) the Default is not, in the opinion of the Customer, capable of remedy; or
 - (c) the Default is a Material Breach.
- H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Customer of its failure to pay. If the Customer fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause C3 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Non Default Termination or Change of Government Policy

- H3.1 The Customer may terminate the Contract at any time by giving 30 days' notice to the Contractor.
- H3.2 The Customer may terminate the Contract by giving to the Contractor at least [] Months' notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Customer acting reasonably, the Services are no longer required or are no longer affordable to the Customer.

H4 Not Used

H5 Consequences of Expiry or Termination

- H5.1 If the Customer terminates the Contract under clauses H2 and makes other arrangements for the supply of the Services the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

- H5.2 If Contract is terminated under clauses H2 the Customer shall make no further payments 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 Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Customer terminates the Contract under clause H3 the Customer shall make no further payments to the Contractor except 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 Customer.
- H5.4 Save as otherwise expressly provided in the Contract:
- (a) 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
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E7 (Security), E8 (Intellectual Property Rights), E9 (Audit), F8 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- H6.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Contract may be terminated with immediate effect by the Customer by notice.

- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Customer's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Customer all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) immediately vacate any Customer Premises occupied by the Contractor;
 - (d) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Customer and/or the Replacement Contractor to conduct due diligence.
- H7.2 **Not Used**
- H7.3 If the Contractor does not comply with clauses H7.1(a) and (b), the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
- H7.4 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H7.1(d) and (e) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Customer, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information

necessary to enable the Customer to issue tender documents for the future provision of the Services.

- H8.2 The Customer shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Customer shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Customer has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Customer shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Customer during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Customer, the Contractor shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.

H9 Exit Management

- H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to affect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10 and current Schedule 6 (Exit Management Strategy).

H10 Exit Procedures

- H10.1 Where the Customer requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Customer and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Annexe 3 (Tender Response (Including Pricing Matrix)) or forming the basis for the Price.
- H10.3 When requested to do so by the Customer, the Contractor shall deliver to the Customer details of all licences for software used in the provision of the Services including the software licence agreements.
- H10.4 Within one Month of receiving the software licence information described above, the Customer shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Customer a plan for licence transfer.

H11 Knowledge Retention

- H11.1 The Contractor shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Contractor to the Customer on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Customer free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Customer. The Contractor shall comply with the Customer's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

- I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with

English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Customer to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of the Contractor and the Commercial Director (or equivalent) of the Customer.
- I2.2 Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless: (a) the Customer considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- (a) The Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Customer of its intentions and the Customer shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Customer that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Customer may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Customer shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;

- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 12.6(a) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Customer under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 - CHANGE CONTROL²

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Customer entered into a Contract for the supply of: **[insert details]** dated **[dd/mm/yyyy]** (The "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect from the date on which both the Customer and the Contractor have communicated acceptance of its terms.

² Please note that this is effectively a joint schedule which will apply to both the Framework Agreement and the Call-Off Contract.

SIGNED ON BEHALF OF THE CUSTOMER:	SIGNED ON BEHALF OF THE CONTRACTOR:
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

SCHEDULE 2 – NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the “**Commencement Date**”

BETWEEN:

Explain Market Research Ltd of The Core, Bath Lane, Newcastle Helix, Newcatle upon Tyne, Tyne and Wear, NE4 5TF - (registered in England and Wales under number 02880683) whose registered office is situated at The Core, Bath Lane, Newcastle Helix, Newcatle upon Tyne, Tyne and Wear, NE4 5TF (the “**Contractor**”);

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor] (the “**Disclosee**”).

(each a “**Party**” and together the “**Parties**”).

WHEREAS:

- (a) The Contractor has contracted with [insert name] (the “**Customer**”) to provide services to the Customer in an agreement dated [insert date] (the “**Contract**”).
- (b) The Contract places an obligation of confidentiality on the **Contractor**. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Customer in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Customer which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein (this “**Agreement**”).
- (d) Any Confidential Information disclosed by the Customer or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Customer together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

- a) “**Confidential Information**” means: any information which has been designated as confidential by the Customer in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it

is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Customer which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Customer data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Customer and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

- b) “**Law**” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor’s delivery of the services under the Contract without the prior written permission of the Customer.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Customer or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Customer from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.
11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Customer and notified to the Disclosee, to the Customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 14.3 Disclosure authorised in writing by the Customer;
 - 14.4 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;

- 14.5 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Customer.

15. The Disclosee shall: notify the Contractor and the Customer promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Customer or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Customer.

23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Customer. The Parties shall only with the prior written consent of the Customer be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

SIGNED by the Disclosee:

SCHEDULE 3 - CONTRACTOR AND THIRD PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 3, “**Contractor Software**” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

Software	Supplier (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

THIRD PARTY SOFTWARE

For the purposes of this Schedule 3, “**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 3. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?
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SCHEDULE 4 – SECURITY REQUIREMENTS³

INTERPRETATION AND DEFINITION

For the purposes of this Schedule 4, unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Baseline Security Requirements” means the current baseline security requirements set out in the Annex to this Schedule as updated from time to time by the Authority and notified to the Contractor.

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data and Customer Data) used by the Authority, Customer or the Contractor in connection with the Contract.

“Contractor Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority or Customer) for the provision of the Services;

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 3.

“Data” means Authority Data or Customer Data (as the case may be).

“ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

“Information Assurance Standards” means the set of policies, procedures, systems and processes which the Contractor shall implement, maintain and update in accordance with this Schedule 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft;

“Protectively Marked” shall have the meaning as set out in the Security Policy.

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 4.

“Software” means Specially Written Software, Contractor Software and Third Party Software.

“Specially Written Software” means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

³ Please note that this is effectively a joint schedule which will apply to both the Framework Agreement and the Call-Off Contract.

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 3.

1. PRINCIPLES OF SECURITY

- 1.1 The Contractor acknowledges that the Authority and the Customer place great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Data.
- 1.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
 - 1.2.1 is in accordance with Good Industry Practice and Law;
 - 1.2.2 complies with the Security Policy; and
 - 1.2.3 meets any specific security threats to the Contractor System.
- 1.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services with respect to Data is appropriate to maintain the following at acceptable risk levels (to be defined by the Customer or the Authority, as the case may be):
 - 1.3.1 loss of integrity;
 - 1.3.2 loss of confidentiality;
 - 1.3.3 unauthorised access to, use of, or interference by any person or organisation;
 - 1.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
 - 1.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource; and
 - 1.3.6 loss of availability due to any failure or compromise of the Services.
 - 1.3.7 processing and storage within the UK or by exception within the EEA. Any processing outside of the UK must be subject to specific approval by the Authority or Customer.

2. SECURITY PLAN

- 2.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period:
- 2.1.1 for the Framework Agreement with respect to Authority Data, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 4; and
 - 2.1.2 for the Call-Off Contract with respect to Customer Data, which will be approved by the Customer, tested, periodically updated and audited in accordance with this Schedule 4.
- 2.2 A draft Security Plan provided by the Contractor as part of its tender or bid is set out herein⁴.
- 2.3 Prior to the Commencement Date the Contractor will deliver to the Authority or the Customer for approval the final Security Plan.
- 2.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority or the Customer the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority or the Customer and re-submit it for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority or the Customer. If the Authority or the Customer does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 (Dispute Resolution). No approval to be given by the Authority or the Customer pursuant to this paragraph 2.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 2.1 to 2.4 shall be deemed to be reasonable.
- 2.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- 2.5.1 the provisions of this Schedule 4;
 - 2.5.2 the provisions of Annexe 1: (Part A: Services) relating to security;
 - 2.5.3 the Information Assurance Standards;
 - 2.5.4 the data protection compliance guidance produced by the Authority;
 - 2.5.5 the Baseline Security Requirements set out in the Annex to this Schedule 4;

⁴ DN: Draft Security Plan TBC

- 2.5.6 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy;
 - 2.5.7 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
 - 2.5.8 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 2.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 2.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 2.8 The Security Plan will be structured in accordance with ISO/IEC27002⁵ and ISO/IEC27001:2013 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Framework Agreement or the Contract which cover specific areas included within that standard.
- 2.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or Customer or otherwise specified in this Schedule 4.

3. AMENDMENT AND REVISION

- 3.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 3.1.1 emerging changes in Good Industry Practice or the relevant Quality Standards;
 - 3.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
 - 3.1.3 any new perceived or changed threats to the Contractor System;
 - 3.1.4 changes to security policies introduced Government-wide or by the Authority; and/or

⁵ Ref TBC

3.1.5 a reasonable request by the Authority or Customer.

3.2 The Contractor will provide the Authority or Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority or Customer.

3.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority or Customer request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

4. AUDIT AND TESTING

4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority or Customer.

4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority or Customer with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

4.3 Without prejudice to any other right of audit or access granted to the Authority or Customer pursuant to the Framework Agreement or the Contract (as the case may be), the Authority or Customer shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority or Customer may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority or Customer of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority or Customer. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5. BREACH OF SECURITY

- 5.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 5.2 Upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Contractor shall immediately take all reasonable steps necessary to:
- 5.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
 - 5.2.2 prevent an equivalent breach in the future;
 - 5.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority or Customer;
 - 5.2.4 investigate the incident and produce a detailed report for the Authority or Customer within 5 Working Days of the discovery of the incident.
- 5.3 Such steps shall include any action or changes reasonably required by the Authority or Customer. If such action is taken in response to a breach that is determined by the Authority or Customer acting reasonably not to be covered by the obligations of the Contractor under the Framework Agreement or Contract (as the case may be), then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 1 (Change Control).
- 5.4 The Contractor shall as soon as reasonably practicable provide to the Authority or Customer full details (using such reporting mechanism as may be specified by the Authority or Customer from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

6. CONTRACT EXIT – SECURITY REQUIREMENTS

- 6.1 On termination or expiry of either the Framework Agreement or the Contract, the Contractor will either return all Data to the Authority or Customer or provide a certificate of secure destruction using an industry and Authority or Customer approved method. Destruction or return of the Data will be specified by the Authority or Customer at the time of termination or expiry of either the Framework Agreement or the Contract.

ANNEX – BASELINE SECURITY REQUIREMENTS

1. SECURITY CLASSIFICATION OF INFORMATION

1.1 If the provision of the Services requires the Contractor to Process Authority Data or Customer Data which is classified as:

- 1.1.1 OFFICIAL-SENSITIVE, the Contractor shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Quality Standards; and or
- 1.1.2 SECRET or TOP SECRET, the Contractor shall only do so where it has notified the Authority or Customer prior to receipt of such Authority Data or Customer Data and the Contractor shall implement additional measures as agreed with the Authority or Customer (as the case may be) from time to time in order to ensure that such information is safeguarded in accordance with the applicable Quality Standards.

2. END USER DEVICES

2.1 The Contractor must manage, and must ensure that all Sub-Contractors manage, all end-user devices used by the Contractor on which Authority Data or Customer Data is Processed in accordance the following requirements:

- 2.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
- 2.1.2 users must authenticate before gaining access;
- 2.1.3 all Data must be encrypted using an encryption tool agreed to by the Authority or Customer;
- 2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
- 2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Data;
- 2.1.6 the Contractor or Sub-Contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Data on the device and prevent any user or group of users from accessing the device;
- 2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Contractor, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

- 2.2 The Contractor must comply, and ensure that all Sub-Contractors comply, with the recommendations in NCSC Device Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under the Framework Agreement or Call-Off Contract.
- 2.3 Where there any conflict between the requirements of this Schedule 4 (Security Requirements) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

3. ENCRYPTION

- 3.1 The Contractor must ensure, and must ensure that all Sub-Contractors ensure, that Data is encrypted:
- 3.1.1 when stored at any time when no operation is being performed on it; and
 - 3.1.2 when transmitted.
- 3.2 Where the Contractor or a Sub-Contractor, cannot encrypt Data the Contractor must:
- 3.2.1 immediately inform the Authority or Customer of the subset or subsets of Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 3.2.2 provide details of the protective measures the Contractor or Sub-Contractor (as applicable) proposes to take to provide equivalent protection to the Authority or Customer as encryption; and
 - 3.2.3 provide the Authority or Customer with such information relating to the Data concerned, the reasons why that Data cannot be encrypted and the proposed protective measures as the Authority or Customer may require.
- 3.3 The Authority or Customer, the Contractor and, where required, any relevant Sub-Contractor shall meet to agree appropriate protective measures for the unencrypted Data.
- 3.4 Where the Authority or Customer and Contractor reach agreement, the Contractor must update the Security Plan to include:
- 3.4.1 the subset or subsets of Data not encrypted and the circumstances in which that will occur; and
 - 3.4.2 the protective measure that the Contractor and/or Sub-Contractor will put in place in respect of the unencrypted Data.
- 3.5 Where the Authority or Customer and Contractor do not reach agreement within 40 Working Days of the date on which the Contractor first notified the Authority or Customer that it could not encrypt certain Data, either party may refer the matter to be determined in accordance with the relevant Dispute Resolution Procedure.

4. PERSONNEL SECURITY

- 4.1 All Staff shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks

must include all pre-employment checks which are required by the BPSS including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.

- 4.2 The Authority or Customer and the Contractor shall review the roles and responsibilities of the Staff who will be involved in the management and/or provision of the Services in order to enable the Authority or Customer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a counter terrorist check; a security check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Data which, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Contractor shall not permit Staff who fail the security checks required by paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority or Customer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Contractor shall ensure that Staff are only granted such access to Authority Data or Customer Data as is necessary to enable the Staff to perform their role and to fulfil their responsibilities.
- 4.5 The Contractor shall ensure that Staff who no longer require access to the Data (e.g. they cease to be employed by the Contractor or any of its Sub-Contractors), have their rights to access the Data revoked within 1 Working Day.
- 4.6 The Contractor shall ensure that Staff that have access to the Premises, the Customer System or Data receive regular training on security awareness that reflects the degree of access those individuals have to the Premises, the Customer System or Data.
- 4.7 The Contractor shall ensure that the training provided to Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Premises, the Customer System, Data or Customer Data ("phishing").

5. IDENTITY, AUTHENTICATION AND ACCESS CONTROL

- 5.1 The Contractor shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Contractor System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Premises are identified and authenticated before they are allowed access to the Premises.

- 5.2 The Contractor shall apply the 'principle of least privilege' when allowing persons access to the Contractor System and Premises so that such persons are allowed access only to those parts of the Premises and the Contractor System they require.
- 5.3 The Contractor shall retain records of access to the Premises and to the Contractor System and shall make such record available to the Authority or Customer on request.

6. DATA DESTRUCTION OR DELETION

6.1 The Contractor shall:

- 6.1.1 prior to securely sanitising any Data or when requested the Contractor shall provide the Government with all Data in an agreed open format;
- 6.1.2 have documented processes to ensure the availability of Data in the event of the Contractor ceasing to trade;
- 6.1.3 securely erase in a manner agreed with the Authority or Customer any or all Data held by the Contractor when requested to do so by the Authority or Customer;
- 6.1.4 securely destroy in a manner agreed with the Authority or Customer all media that has held Data at the end of life of that media in accordance with any specific requirements in the Framework Agreement or Call-Off Contract and, in the absence of any such requirements, as agreed by the Authority; and
- 6.1.5 implement processes which address the Centre for the Protection of National Infrastructure and NCSC guidance on secure sanitisation.

7. AUDIT AND PROTECTIVE MONITORING

- 7.1 The Contractor shall collect audit records which relate to security events in the Customer System or Contractor System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Customer System or Contractor System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Data.
- 7.2 The Contractor and the Authority or the Customer shall work together to establish any additional audit and monitoring requirements for the Contractor System.
- 7.3 The retention periods for audit records and event logs must be agreed with the Authority or Customer and documented in the Security Plan.

8. LOCATION OF DATA

The Contractor shall not and shall procure that none of its Sub-Contractors Process Data outside the United Kingdom without the prior written consent of the Authority or Customer (as the case may be), which may be subject to conditions.

9. VULNERABILITIES AND CORRECTIVE ACTION

- 9.1 The Authority and the Contractor acknowledge that from time to time vulnerabilities in the Contractor System will be discovered which unless mitigated will present an unacceptable risk to the Data.
- 9.2 The severity of vulnerabilities for Third Party Software shall be categorised by the Contractor as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Plan and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to paragraph 9.4, the Contractor shall procure the application of security patches to vulnerabilities in the Contractor System within:
- 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Contractor System set out in paragraph 9.3 shall be extended where:
- 9.4.1 the Contractor can demonstrate that a vulnerability in the Contractor System is not exploitable within the context of the Services (e.g. because it resides in a Contractor Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Contractor within the timescales set out in paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Contractor's ability to deliver the Services in which case the Contractor shall be granted an extension to such timescales of five (5) days, provided the Contractor had followed and continues to follow the security patch test plan agreed with the Authority or Customer; or
 - 9.4.3 the Authority or Customer agrees a different maximum period after a case-by-case consultation with the Contractor under the processes defined in the Security Plan.
- 9.5 The Security Plan shall include provisions for major version upgrades of all Third Party Software to be kept up to date such that all Third Party Software are always in mainstream support throughout the Contract Period unless otherwise agreed by the

Authority or Customer in writing. All Third Party Software should be no more than N-1 versions behind the latest software release.

10. SECURE ARCHITECTURE

10.1 The Contractor shall design the Contractor System in accordance with:

- 10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
- 10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- 10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
 - (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Contractor should have a security governance framework which coordinates and directs its management of the Services and information within it;
 - (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
 - (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Staff have access to Data and/or the Customer System that those personnel be subject to appropriate security screening and regular security training;
 - (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;

- (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Contractor to ensure that appropriate security controls are in place with its Sub-Contractors and other suppliers;
- (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Contractor to make the tools available for the Authority or Customer to securely manage their use of the Service;
- (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Contractor to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Contractor to be able to provide the Authority or Customer with the audit records it needs to monitor access to the Service and the Data held by the Contractor and/or its Sub-Contractors; and
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Contractor to educate Staff on the safe and secure use of the Contractor System.

SCHEDULE 5 – DEED OF GUARANTEE TEMPLATE

Guarantee

This Deed is made on 20[]

Between

- (1) [INSERT DETAILS] (**Guarantor**); and
- (2) [INSERT NAME OF CUSTOMER] of [INSERT ADDRESS] (**Customer**).

By an agreement (Contract) dated and made between (1) [Customer] and (2) [] (Contractor), the Contractor has agreed to provide the Services (as such term is defined under the Contract) in accordance with the terms and conditions of the Contract.

It is agreed

1 Guarantee

- 1.1 In consideration of the Customer entering into the Contract with the Contractor, as the Guarantor hereby acknowledges, the Guarantor hereby unconditionally and irrevocably guarantees to the Customer as sole and primary obligor:
 - (a) the due and punctual payment by the Contractor of all sums and liabilities payable or to be payable under or pursuant to the Contract to the Customer as and when the same fall due (with the intention that any amount not recoverable for any reason from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity); and
 - (b) the due and punctual performance and observance by the Contractor of all other acts, covenants, warranties, duties, undertakings and obligations to be performed or observed by the Contractor under or pursuant to the Contract, and hereby undertakes to keep the Customer fully and effectually indemnified against all losses, damages, costs, claims and expenses whatsoever and howsoever arising out of or in connection with any failure on the part of the Contractor to effect due and punctual payment of any sum and/or liability as aforesaid and/or to perform or observe all or any of the other acts, covenants, warranties, duties, undertakings and obligations as aforesaid for any reason whatsoever, including the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Contractor or the termination of the Contract or the employment of the Contractor under the Contract and undertakes to pay all sums covered by this indemnity on the Customer's first written demand without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of

any nature whatsoever provided always that the Guarantor's liability under or pursuant to this Deed shall not exceed the Contractor's liability under or pursuant to the Contract.

- 1.2 The obligations of the Guarantor under or pursuant to this Deed shall not be discharged except by performance or the procurement of performance by the Guarantor. The guarantee given by the Guarantor under this Deed shall be a primary obligation of the Guarantor and accordingly the Customer shall not be obliged before enforcing their rights under this Deed and the obligations of the Guarantor under or pursuant to this Deed shall not be subject to the Customer taking any steps or action against the Contractor, including, without limitation, the granting of any time or indulgence to the Contractor, the taking of any legal proceedings or action or the obtaining of any judgment against the Contractor, the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Contractor or the pursuance or exhaustion of any other right or remedy against the Contractor.
- 1.3 The rights of the Customer and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any extension of time, indulgence, forbearance or concession given to the Contractor, or any assertion of or failure to assert any right or remedy against the Contractor, or by any modification or variation of the provisions of the Contract, or by the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Contractor or any change in the status, function, control or ownership of the Contractor, or by the Customer holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by the Customer varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed. Without prejudice to the generality of the foregoing nor shall the Guarantor be discharged or released (in whole or in part) from its obligations under this Deed by any of the following (notwithstanding, where relevant that any of the same may be without the consent of the Guarantor):
- (a) an assignment of the Contract or a novation of the Contract; and
 - (b) any incapacity or lack of power, authority or legal personality of the Contractor.
- 1.4 The guarantee and indemnity contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to the Customer by the Contractor under or pursuant to the Contract shall have been duly paid and all the Contractor's obligations under or pursuant to the Contract shall have been duly performed. If any payment received by the Customer pursuant to this Deed or the Contract shall on the subsequent insolvency of the Contractor or of the Guarantor be avoided under any laws relating to insolvency, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the Contractor and the Guarantor shall indemnify the Customer in respect thereof.

2 General provisions

- 2.1 This Deed is in addition to and not in substitution for any other security which the Customer may at any time hold in relation to the Services and may be enforced without first having recourse to any such security.
- 2.2 Subject to the express provisions of this Deed, the rights and remedies of the Customer under, or pursuant, to this Deed are cumulative, may be exercised as often as the Customer considers appropriate and are in addition to its rights and remedies under general law.
- 2.3 The Guarantor agrees to be bound by decisions made pursuant to the Dispute Resolution Procedure under the Contract.
- 2.4 Subject to clause 2.3, this Deed and any non-contractual obligations arising out of, or in connection with it, are governed by, and shall be construed in accordance with the laws of England and Wales.
- 2.5 The Courts of England and Wales shall have exclusive jurisdiction in respect of all matters relating to or arising out of this Deed and its performance (including in relation to any non-contractual obligations arising out of or in relation to this Deed).
- 2.6 If a provision of this Deed is or becomes illegal, invalid or unenforceable, such provision shall not affect the legality, validity or enforceability of any other provision of this Deed, and the parties shall negotiate in good faith and in a reasonable manner to agree the terms of a mutually acceptable and satisfactory alternative for that provision.
- 2.7 Notices hereunder shall be served on the Guarantor at its registered office.

Executed as a deed by the parties or their duly authorised representatives on the date of this Deed.

Executed as a deed by
[GUARANTOR]
acting by its duly authorised representative(s)

Executed as a deed by
[CUSTOMER] acting by its duly authorised representative(s)

SCHEDULE 6 - EXIT MANAGEMENT STRATEGY

- 1.1 The Contractor shall, within 3 months after the Commencement Date, deliver to the Customer, an Exit Plan which:
 - (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the relevant Services from the Contractor to the Customer and/or its Replacement Contractor on the partial termination, expiry or termination of the Contract;
 - (b) complies with the requirements set out in Paragraph 1.2 of this Schedule; and
 - (c) is otherwise reasonably satisfactory to the Customer.
- 1.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.3 The Parties acknowledge that the migration of the Services from the Contractor to the Customer and/or its Replacement Contractor may be phased, such that certain of the Services are handed over before others.
- 1.4 The Contractor shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule if requested by the Customer, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Contractor shall submit the revised Exit Plan to the Customer for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Contractor will submit for the Customer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent

with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

- 1.6 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Customer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

SCHEDULE 7 – KEY PERFORMANCE INDICATORS

Approved Contractors will be expected to deliver services in line with the Key Performance Indicators (KPIs) outlined below. These are the minimum key performance indicators which will be used to measure the success of this Contract.

No	Key Performance Indicator	Threshold
1	Delivery of Survey and Feedback outputs The Contractor is required to deliver good quality survey outputs for each of the defined work packages, in line with CQC's guidance, instructions or commissioning notes for any work package.	100% Critical KPI
2	Resource mobilisation in line with survey programme requirements profile The Contractor is required to ensure that there are sufficient personnel and other resources to deliver the work packages on time and to the quality standards required.	95% Critical KPI
3	Attendance at Meetings The Contractor is required to attend all planned meetings including briefing meetings for each survey and an annual contract review meeting unless otherwise agreed with the Commissioning organisation	97% Critical KPI
4	Availability of Contractor The Approved Contractor will be contactable to the Commissioning organisation between the hours of 9am to 5pm Monday to Friday (excluding Bank Holidays) The Contractor is required to respond to all general queries within 24 hours. Simple queries should be resolved within 48 hours. Complex queries should be resolved within 5 days.	95% Critical KPI 95% Non-critical KPI 95% Non-critical KPI 95% Non-critical KPI

5	Security Requirements Services will be delivered in accordance with information security, data protection, Data Protection Legislation, any confidentiality requirements including those agreed with the Confidentiality Advisory Group (CAG). The Approved Contractors will advise CQC or its Co-ordination Centre where any such breach occurs.	100% Critical KPI
6	Delivery Timescales Services will be delivered in accordance with agreed timelines and any change is raised and agreed with the commissioning authority.	95% Critical KPI
7	Evaluation and learning Evaluation and learning will be completed at the end of each delivered package, and any identified improvements flagged along with an action plan for development.	95% Non-critical KPI
8	Quality of Expertise The Approved Contractor is to ensure that individuals providing support to the survey programme are those stated in the response or an equivalently qualified individual where the stated personnel have left.	100% Critical KPI
9	<u>Quality Assurance Framework</u> The Approved Contractor is required to deliver survey and feedback outputs to a standard that is in line with our quality assurance framework.	100% Critical KPI

The Authority reserves the right to use the performance data associated with this as a means to measure Contract and Contractor performance and these will be used to determine contract remedy to be applied.

Performance will be scored on a points system, with a failure to meet critical KPIs (3 points) and non-critical (1 point). If a breach of 3 points or more is made over two consecutive months then the supplier will be in breach of contract and remedy applied. This breach can

be made up of either 1 critical breach or a number of non-critical breaches or a mixture of the two.

Numbers of points will be used to determine actions needed including a mechanism of “requires action” and or “contract action notices”.

SCHEDULE 8 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

[To be provided by the Contractor within thirty (30) days of contract commencement]

SCHEDULE 9 – MOBILISATION PLAN

[To be mutually agreed between the Customer and the Contractor]

SCHEDULE 10 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS⁶

1. This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority and the Customer at its absolute discretion (as the case may be).
2. The contact details of the Authority's Data Protection Officer are:
[REDACTED]
3. The contact details of the Contractor's Data Protection Officer are: [REDACTED]
[REDACTED]
4. The Processor shall comply with any further written instructions with respect to processing by the Controller.
5. Any such further instructions shall be incorporated into this Schedule.

Annex A: Schedule of Processing

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor for the data collection process of the survey and the individual trusts are the data controllers for the sample.</p> <p>For purposes of sampling and processing of data from NHS Trusts, NHS Trusts shall be the Controller and the Approved Contractor shall be the Processor. The Contractor shall enter into separate contracts with said NHS Trusts in accordance with the requirements of Data Protection Legislation.</p>
Subject matter of the processing	<p>The processing is needed in order to ensure that the Processor can effectively deliver the Contract to provide an Approved Contractor service for CQC's NHS Patient Survey Programme.</p>

⁶ Please note that this is effectively a joint schedule which will apply to both the Framework Agreement and the Call-Off Contract.

Duration of the processing	For the Term of the Contract 2023-2025 plus any agreed extension periods
Nature and purposes of the processing	<p>The nature of the processing includes collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose of the processing is to assess people's experiences of their care.</p>
Type of Personal Data	<p>Demographic and care details described as in the survey sampling instructions. This includes name, address and telephone details.</p> <p>Such data will also include any survey-specific information, for example date and location of births occurring in the Maternity Survey's Sample.</p>
Categories of Data Subject	People using health and care services in England
International transfers and legal gateway	<p><i>[Explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]</i></p> <p><i>To be completed by supplier for review by CQC</i></p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or Data Protection Legislation to preserve that type of data</p>	<p>Respondent level data set is retained indefinitely as part of the data archive and for trend analysis. Name, address and telephone details are destroyed by Approved Contractors and Trusts once they are no longer needed for the purposes of completing the survey, this varies by provider but is typically around six months from the end of fieldwork.</p>

Annex B: Security

- 1) The Contractor shall hold at least Cyber Essentials Plus certification and ISO 27001:2013 certification.
- 2) The Contractor shall perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.
- 3) If the provision of the Services requires the Contractor to Process [Authority/Customer] Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Contractor shall implement such additional measures as agreed with the [Authority/Customer] from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.
- 4) The Contractor shall ensure that any [Authority/Customer] Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the [Authority/Customer] except where the [Authority/Customer] has given its prior written consent to an alternative arrangement.
- 5) The Contractor shall ensure that any device which is used to Process [Authority/Customer] Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.
- 6) The Contractor shall at their own cost and expense, procure a CHECK or CREST Certified Supplier to perform an ITHC or Penetration Test prior to any live [Authority/Customer] data being transferred into their systems. The ITHC scope must be agreed with the [Authority/Customer] to ensure it covers all the relevant parts of the system that processes, stores or hosts [Authority/Customer] Data.
- 7) The Contractor shall ensure that any [Authority/Customer] Data which it causes to be transmitted over any public network (including the Internet, mobile networks or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 8) The Contractor's Staff may be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Contractor may be required to implement additional security vetting for some roles.

- 9) The Contractor must operate an appropriate access control regime to ensure that users and administrators of the Service are uniquely identified. The Contractor must retain records of access to the physical sites and to the Service.
- 10) The Contractor must be able to demonstrate they can supply a copy of all data on request or at termination of the Service and must be able to securely erase or destroy all data and media that the [Authority/Customer] Data has been stored and processed on.
- 11) The Contractor shall collect audit records which relate to security events in delivery of the Service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of [Authority/Customer] Data. The retention periods for audit records and event logs must be agreed with the [Authority/Customer] and documented.
- 12) The Contractor shall not, and shall procure that none of its Sub-contractors, process [Authority/Customer] Data outside the EEA without the prior written consent of the [Authority/Customer] and the Contractor shall not change where it or any of its Sub-contractors process [Authority/Customer] Data without the [Authority/Customer]'s prior written consent which may be subject to conditions.
- 13) The Contractor shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.
- 14) The Contractor shall design the service in accordance with:
 - NCSC "Security Design Principles for Digital Services";
 - NCSC "Bulk Data Principles"; and
 - NSCS "Cloud Security Principles".

[SCHEDULE 11: MINI TENDER RESPONSE]

[Optional Schedule to be added if there is a mini tender exercise.]