



Call-off Terms and Conditions

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions have the meanings given to them below:

Approval: means the prior written approval of the Authority.

Auditor: means the National Audit Office or an auditor appointed by the Authority as the context requires.

Authorised Representative: the persons respectively designated as such by the Authority and the Supplier in the Order Form.

Authority: the Secretary of State for Education.

Commencement Date: the service commencement date set out in the Order Form.

Contract: these call-off terms and conditions.

Contract Period: the period from the Commencement Date to:

the date of expiry set out in clause 3;

following an extension pursuant to clause 4, the date of expiry of the extended period; or

such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Year: a period of 12 months starting on the Commencement Date.

Controller: as defined in the GDPR

Copyright means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

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.

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

Data Protection Legislation: means the GDPR, the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and protection of Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party incorporating the annexed GDPR Schedule 2

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Officer: As defined in the GDPR.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Default: means any breach of the obligations of the relevant Party under the Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Supplier's staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

DPA: means the Data Protection Act 1998.

Database Rights means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

Data Subject: as defined in the GDPR.

Deliverables: those deliverables listed in the Order Form.

Dispute Resolution Procedure: the dispute resolution procedure in clause 43.

DPS: means the dynamic purchasing system established by the Authority for the appointment of suppliers to deliver the Services, including the Supplier, pursuant to regulation 34 of the Regulations.

EIR: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

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: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Supplier's organisation.

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Good Industry Practice: 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.

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

Month: a calendar month.

Order: an order for Services sent by the Authority to the Participant.

Order Form: a document setting out details of an Order in the form set out in Redimo.

Party: either the Authority or the Supplier.

Personal Data: as defined in the Data Protection Legislations including the GDPR to be processed in accordance with the Schedule 2a of this Agreement.

Personal Data Breach: As defined in the GDPR.

Premises: the location where the Services are to be supplied, as set out in the Order Form.

Price: the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract.

Processor: as defined in the Data Protection Legislation.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident.

Professional: means an employee of the Supplier named in the Order Form who has been selected to provide the Services.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
- b) induce that person to perform improperly a relevant function or activity; or
- c) reward that person for improper performance of a relevant function or activity;
- d) 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 Agreement;
- e) committing any offence:
 - i. under the Bribery Act 2010;
 - ii. under legislation creating offences concerning fraudulent acts;
 - iii. at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - iv. defrauding, attempting to defraud or conspiring to defraud the Authority.

Property: the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Contract.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation 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 Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

Redimo: the Authority's electronic procurement and contract management system

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Replacement Supplier: any third party service provider appointed by the Authority to supply any services that are substantially the same as or similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

RFQ: means a request for quotation following which the Supplier was awarded the Contract.

Services: means the services described in the Order Form.

Staff Vetting Procedures: the Authority's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;
- (c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

Supplier: the supplier registered on the DPS who has been accepted an Order.

Tender: means the quotation documents submitted by the Supplier to the Authority in response to an RFQ.

Variation: has the meaning given to it in clause 30.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

2 INTERPRETATION

- a) The interpretation and construction of the Contract shall be subject to the following provisions:
- b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- c) words importing the masculine include the feminine and the neuter;
- d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- h) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- i) references in the Contract to any clause or sub-clause or without further designation shall be construed as a reference to the clause or sub-clause to the Contract so numbered.

3. CONTRACT EXECUTION

- 3.1 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is executed and takes effect on the date on which both Parties communicate acceptance of its terms on Redimo.
- 3.2 The Contract shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. EXTENSION OF CONTRACT PERIOD

The Authority may extend the Contract for any further period or periods specified in the Order Form. The provisions of the Contract shall apply throughout any such extended period.

5. SUPPLIER'S STATUS

At all times the Supplier shall be an independent service provider 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 except as expressly permitted by the Contract.

6. AUTHORITY'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Supplier.

7. MISTAKES IN INFORMATION

The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Authority by the Supplier in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

8. SERVICES

8.1 The Supplier shall supply the Services in accordance with the Authority's requirements as set out in the Contract in consideration for the payment of the Price. The Authority may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.

8.2 The Supplier acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Application so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

8.3 The Supplier shall:

8.3.1 at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;

8.3.2 to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Authority before the supply of the Services; and

8.3.3 at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

8.3.4 ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

8.4 Subject to Approval, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

9. PROVISION AND REMOVAL OF EQUIPMENT

9.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.

9.2 The Supplier shall not deliver any Equipment or begin any work on the Premises without Approval.

9.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by

the Authority. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

- 9.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 On completion of the Services, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

10. PROFESSIONALS

- 10.1 Where the Supplier is not an individual:
 - 10.1.1 the Parties have agreed that the Professional shall provide the Services on behalf of the Supplier. The Supplier shall obtain Approval before removing or replacing the Professional and, where possible, the Supplier shall give the Authority at least one Month's written notice of its intention to replace the Professional;
 - 10.1.2 the Authority may require the Supplier to remove a Professional whose performance the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing the Professional;
 - 10.1.3 the Authority shall not unreasonably delay or withhold Approval for the appointment of a replacement for the Professional by the Supplier, but the Authority may interview the candidates to replace the Professional before one of them is appointed; and
 - 10.1.4 the Supplier acknowledges that the Professional is essential to the proper provision of the Services. The Supplier shall ensure that the Professional is not absent for more than 10 Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Professional whom he or she has replaced.

11. SUPPLIER'S STAFF

- 11.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
 - 11.1.1 the Supplier;
 - 11.1.2 any member of the Staff; or
 - 11.1.3 any person employed or engaged by any member of the Staffwhose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- 11.2 At the Authority's request, the Supplier shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 11.3 If the Supplier fails to comply with clause 11.2 within 2 Months of the date of the request then the Authority may exclude Supplier Staff from entry to the Premises. Exercise of the Authority's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.
- 11.4 The Supplier's staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.5 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all its staff employed or engaged by the Supplier at the Commencement Date and that it

shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

12. ENVIRONMENTAL REQUIREMENTS

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

13. HEALTH AND SAFETY

- 13.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 13.2 While on the Premises, the Supplier shall comply with any health and safety measures in respect of Staff and other persons working there.
- 13.3 The Supplier shall notify the Authority immediately if there is any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other person in the performance of its obligations under the Contract.
- 13.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

14. PRICE

- 14.1 In consideration of the Supplier's performance of its obligations under the Contract, the Authority shall pay the Price.
- 14.2 The Authority shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

15. PAYMENT AND VAT

- 15.1 The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Authority to substantiate the invoice.
- 15.2 Where the Supplier submits an invoice to the Authority in accordance with clause 15.1, the Authority will consider and verify that invoice within 7 days.
- 15.3 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 15.4 Where the Authority fails to comply with clause 15.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Authority.
- 15.5 The Supplier shall add VAT to the Price at the prevailing rate as applicable.
- 15.6 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 15.7 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date on which the tax or other liability is payable by the Authority.

16. RECOVERY OF SUMS DUE

- 16.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority.
- 16.2 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.
- 16.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 16.4 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.

17. CONFLICTS OF INTEREST

- 17.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Authority under the provisions of the Contract.
- 17.2 The Supplier shall promptly notify the Authority (and provide full particulars to the Authority) if any conflict referred to in clause 17.1 arises or is reasonably foreseeable.
- 17.3 The Authority may terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

18. DISCRIMINATION

- 18.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 18.2 The Supplier shall take all reasonable steps to secure the observance of clause 18 by all servants, employees or agents of the Supplier and all suppliers employed in the execution of the Contract.

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 22 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 such Party's obligations under this Contract;
- 19.2.3 that is reasonably required by the Authority;

19.2.4 where 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 Contract have agreed contains no Confidential Information;

19.2.6 to enable a determination to be made under clause 43;

19.2.7 which is already lawfully in the possession of the receiving Party, before 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 Confidential Information; and

19.2.9 by the Authority relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

19.3 On or before the expiry of the Contract, the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

20. OFFICIAL SECRETS ACTS 1911 TO 1989

20.1 The Supplier shall comply with, and shall ensure that its staff comply with, the provisions of:

20.1.1 the Official Secrets Acts 1911 to 1989; and

20.1.2 section 182 of the Finance Act 1989.

20.2 If the Supplier or its staff fail to comply with this clause, the Authority may terminate the Contract by giving notice in writing to the Supplier.

21. DATA PROTECTION

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 2a. The only processing that the Processor is authorised to do is listed in Schedule 2a by the Controller and may not be determined by the Processor

21.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

21.3 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.

21.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

(a) process that Personal Data only in accordance with Schedule 2a, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller 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 (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), 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;

(c) ensure that :

- (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2a);
- (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;
 - (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 Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(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 Contract unless the Processor is required by Law to retain the Personal Data.

21.5 Subject to clause 21.6, 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 Contract;
- (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.
- 21.6 The Processor's obligation to notify under clause 21.5 shall include the provision of further information to the Controller in phases, as details become available.
- 21.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Controller) including by 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 the Controller 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;
 - (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.
- 21.8 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 GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 21.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, 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 21 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.
- 21.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 21.13 The Controller 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).
- 21.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

[Only include the following Clause 21.15 if there are Joint Controllers]

- 21.15 Where the Parties include two or more Joint Controllers as identified in Schedule 2a in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller agreement based on the terms outlined in Schedule 3b in replacement of Clauses 21.1-21.14 for the Personal Data under Joint Control.

22. FREEDOM OF INFORMATION

- 22.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall:
- 22.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
- 22.1.2 transfer to the Authority all requests for information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 22.1.3 provide the Authority with a copy of all Information belonging to the Authority requested which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
- 22.1.4 not respond directly to a request for information unless authorised in writing to do so by the Authority.
- 22.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIR to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

23. PUBLICITY

- 23.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval.
- 23.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation on the Authority, including any examination of the Contract by the Auditor.
- 23.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

24. INTELLECTUAL PROPERTY RIGHTS

- 24.1 All Intellectual Property Rights in materials:
- 24.1.1 furnished to or made available to the Supplier by or on behalf of the Authority (**Authority IP Materials**) shall remain the property of the Authority (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 24.1.2 prepared by or for the Supplier on behalf of the Authority in connection with the Contract (**Service IP Materials**) shall vest in the Authority (save for Copyright and Database Rights which shall vest in the Crown)
- (together the **IP Materials**).
- 24.2 The Supplier shall not, and shall ensure that Staff shall not, use or disclose IP Materials without Approval save to the extent necessary for the performance by the Supplier of its obligations under the Contract.
- 24.3 The Supplier hereby assigns to the Authority or undertakes to procure the assignment to the Authority of all Intellectual Property Rights which may subsist in the Service IP Materials

(save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service IP Materials and shall include, without limitation, an assignment to the Authority (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Supplier shall execute all documents and do all other acts requested by the Authority and necessary to execute and perfect these assignments and to otherwise evidence the Authority's or the Crown's ownership of such rights.

24.4 The Supplier shall:

24.4.1 waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.

24.4.2 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 Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority 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 Authority to sub-licence, transfer, novate or assign to another provider. The Supplier shall notify the Authority of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service IP Materials.

24.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Supplier shall indemnify and keep indemnified the Authority from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 24, except to the extent that any such claim arises from:

24.5.1 Authority IP Materials; or

24.5.2 the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.

25 RECORDS AND AUDIT ACCESS

25.1 The Supplier 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 and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.

25.2 The Supplier shall keep the records and accounts referred to in clause 25.1 in accordance with good accountancy practice.

25.3 The Supplier shall on request afford the Authority, the Authority's representatives and/or the Auditor such access to such records and accounts as may be required by the Authority from time to time.

25.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Authority and the Auditor.

25.5 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.

- 25.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- 25.6.1 all information requested by the Authority within the scope of the audit;
 - 25.6.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - 25.6.3 access to the Supplier's staff.

- 25.7 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

26 REPLACEMENT OF CORRUPTED DATA

If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

27 REMEDIES FOR INADEQUATE PERFORMANCE

- 27.1 If the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Authority may:
- 27.1.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 27.1.2 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; and/or
 - 27.1.3 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 27.2 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days of the Authority's instructions or such other period of time as the Authority may direct.
- 27.3 If the Supplier:
- 27.3.1 fails to comply with clause 27.2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
 - 27.3.2 persistently fails to comply with clause 27.2
- the Authority may terminate the Contract with immediate effect by giving the Supplier notice in writing.

28 TRANSFER AND SUB-CONTRACTING

- 28.1 The Supplier shall not assign or novate or in any other way dispose of the Contract or any part of it without Approval.

- 28.2 The Supplier shall not sub-contract its obligations under the Contract.
- 28.3 Provided that it has Approval, the Supplier may novate the Contract if:
- 28.3.1 the specific change in supplier was provided for in the procurement process for the award of the Contract;
 - 28.3.2 there has been a universal or partial succession into the position of the Supplier, 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 the Contract.
- 28.4 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 28.4.1 any Contracting Authority;
 - 28.4.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Authority; or
 - 28.4.3 any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

29 WAIVER

- 29.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 29.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

30 VARIATION

- 30.1 Subject to the provisions of this clause 30, the Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order (**Variation**).
- 30.2 The Authority may request a Variation by completing and sending the Variation form attached at Schedule 1 (**Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 30.3 If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Price, the Authority may:
- 30.3.1 agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - 30.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 30.4 If the Parties agree the Variation and any variation in the Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

31 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 31.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

32 SEVERANCE

- 32.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 32.2 If one Party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33 LIABILITY, INDEMNITY AND INSURANCE

- 33.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 33.1.1 death or personal injury caused by its negligence;
 - 33.1.2 Fraud or fraudulent misrepresentation;
 - 33.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 33.1.4 any claim under clause 15.6;
 - 33.1.5 any claim under clause 35; or
 - 33.1.6 any claim under the indemnity in clause 24.3.
- 33.2 Subject to clauses 33.3 and 33.4, the Supplier shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any of its 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 Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier 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 Authority or by breach by the Authority of its obligations under the Contract.
- 33.3 Subject to clauses 33.1 and 33.4, the liability of either Party for Defaults shall be subject to the following financial limits:
- 33.3.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall not exceed £1,000,000 (one million pounds); and
 - 33.3.2 the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of £100,000 (one hundred thousand pounds).
- 33.4 Subject to clause 33.1, neither Party is liable to the other for any:
- 33.4.1 loss of profits;
 - 33.4.2 loss of business;
 - 33.4.3 loss of revenue;
 - 33.4.4 loss of or damage to goodwill;
 - 33.4.5 loss of savings (whether anticipated or otherwise); or

33.4.6 any indirect or consequential loss or damage.

33.5 The Authority may, among other things, recover as a direct loss:

33.5.1 any additional operational and/or administrative expenses arising from the Supplier's Default;

33.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and

33.5.3 the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.

33.6 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

34 INSURANCES

34.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (**Required Insurance**).

34.2 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of 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 Supplier.

34.3 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurance is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

34.4 If the Supplier fails to give effect to and maintain the Required Insurance, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

34.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

34.6 The Supplier shall hold and maintain the Required Insurance for a minimum of 6 years following the expiry or earlier termination of the Contract.

35 TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

35.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the staff (or any of them) as an employer of the staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the staff whether during the Contract Period or arising from termination or expiry of the Contract.

35.2 The Supplier warrants, represents and undertakes that it is VAT registered (if appropriate) and that it complies and will continue to comply with all necessary tax legislation, regulations and requirements, including, without limitation:

35.2.1 if the Supplier is liable to be taxed in the United Kingdom in respect of receipt of the Price, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of receipt of the Price; and

35.2.2 if the Supplier is liable to National Insurance Contributions in respect of receipt of the Price, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to National Insurance Contributions in respect of receipt of the Price.

35.3 The Supplier shall, at the Authority's request, provide the Authority with all assurances, information and documentation (including, without limitation, annual accounts and tax certificates) in relation to tax and financial standing, including, without limitation, information which demonstrates how the Supplier complies with clause 35.2 or why clause 35.2 does not apply to it.

35.4 A request under clause 35.3 may specify the information which the Supplier must provide and the period within which that information must be provided.

36 WARRANTIES AND REPRESENTATIONS

36.1 The Supplier warrants and represents that:

36.1.1 it has full capacity and Authority and all necessary consents to enter into and perform its obligations under the Contract;

36.1.2 the Contract is executed by a duly authorised representative of the Supplier or, if the Supplier is an individual, by the Supplier;

36.1.3 in entering the Contract it has not committed any Prohibited Act;

36.1.4 as at the Commencement Date, all information, statements and representations contained in the Supplier's application to join the DPS and the Tender are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

36.1.5 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 its assets which will or might affect its ability to perform its obligations under the Contract;

36.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

36.1.7 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 Supplier, for its bankruptcy, for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

36.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and

36.1.9 the Services shall be provided and carried out by appropriately experienced, qualified and trained staff with all due skill, care and diligence.

37 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

37.1 Without affecting any other right or remedy available to it, the Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if:

37.1.1 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or has any partner to whom any of the foregoing apply;

- 37.1.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 37.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 37.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
 - 37.1.5 the holder of a qualifying floating charge over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
 - 37.1.6 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - 37.1.7 the Supplier is the subject of a bankruptcy petition or order;
 - 37.1.8 a creditor or encumbrancer of the Supplier 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 Supplier's assets and such attachment or process is not discharged within 14 days;
 - 37.1.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 37.1.1 to clause 37.1.8 (inclusive); or
 - 37.1.10 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 37.2 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Authority may terminate the Contract by notice in writing with immediate effect within 6 Months of:
- 37.2.1 being notified that a Change of Control has occurred; or
 - 37.2.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control
- but shall not be permitted to terminate where Approval was granted before the Change of Control.

38 TERMINATION ON DEFAULT

- 38.1 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:
 - 38.1.1 the Supplier has not remedied the material breach to the satisfaction of the Authority 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
 - 38.1.2 the material breach is not, in the opinion of the Authority, capable of remedy.
- 38.2 For the purposes of clause 38.1, **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 the Authority would otherwise derive from:
 - 38.2.1 a substantial portion of the Contract; or
 - 38.2.2 any of the obligations set out in clauses 10, 20, 21 and 36.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

38.3 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if:

38.3.1 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

38.3.2 if any of the provisions of regulation 73(1) of the Regulations apply; or

38.3.3 any warranty given by the Supplier in clause 36 is found to be untrue or misleading.

39 TERMINATION FOR CONVENIENCE

The Authority may terminate the Contract at any time by giving one Month's written notice to the Supplier.

40 CONSEQUENCES OF TERMINATION OR EXPIRY

40.1 Where the Authority terminates the Contract under clause 38 and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 39, no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

40.2 Except as otherwise expressly provided in the Contract:

40.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before 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

40.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 1, 2, 19 to 23, 25, 26, 30, 31 to 36, 40, 45 and 46.

41 DISRUPTION

41.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other supplier employed by the Authority.

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

41.3 If there is industrial action by its staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

41.4 If the Supplier's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may:

41.4.1 require the Supplier to provide alternative proposals; or

41.4.2 undertake the services itself and recover from the Supplier the additional costs incurred in the process.

41.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will

reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

42 RECOVERY ON TERMINATION

42.1 On the termination of the Contract for any reason, the Supplier shall:

42.1.1 immediately return to the Authority all Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted Suppliers, which was obtained or produced in the course of providing the Services;

42.1.2 immediately deliver to the Authority all Property in good working order;

42.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and

42.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Supplier to conduct due diligence.

42.2 If the Supplier fails to comply with this clause 42, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers where any such items may be held.

42.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance reasonably required by the Authority free of charge.

43 DISPUTE RESOLUTION

43.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) the Parties shall follow the procedure set out in this clause 43.

43.2 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authority and the Supplier shall attempt in good faith to resolve the Dispute;

43.3 if the Authority and Supplier are for any reason unable to resolve the Dispute within 60 days of service of the Dispute Notice the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

43.4 Neither Party may commence any court or arbitration proceedings under clause 43 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

43.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 43.

44 FORCE MAJEURE

44.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from and event of Force Majeure. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been

delayed or failed to be performed. If the period of delay or non-performance continues for 60 days, the Party not affected may terminate the Contract by giving 20 days' written notice to the affected Party.

45 NOTICES

- 45.1 Except as otherwise expressly provided within the Contract, no notice from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the notice.
- 45.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party in the manner referred to in clause 45.3. Provided the relevant communication is not returned as undelivered, the notice shall be deemed to have been given 2 Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt of such letter.
- 45.3 For the purposes of clause 45.2 the address of each Party shall be as set out in the Order Form or as notified to the other Party.

46 GOVERNING LAW AND JURISDICTION

- 46.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 46.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Variation Form

Call-off terms and conditions for services

[NAME OF LOT]

.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[xxxxx] (the **Authority**)

and

[NAME OF SUPPLIER] (the **Supplier**)

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE PRICE].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Authority

Signature.....

Date.....

Name in capitals.....

Address.....

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....

Schedule 2a

Processing, Personal Data and Data Subjects

[Guidance: You may need to vary this section where (in the rare case) the Department and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data. Include the following 2 highlighted paragraphs for Joint Controller relationships.]

Notwithstanding Clause 21.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of: [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]

In respect of Personal Data under Joint Control, Clause 17.1-17.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule 3b instead.

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

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 17.1.
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]
Duration of the processing	[Clearly set out the duration of the processing including dates]

Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), Departments/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]

Schedule 2b Joint Controller Agreement

[Guidance: use this Schedule only where Joint Controller applies in Schedule 2a otherwise delete it]

In this Schedule the Parties must outline each party's responsibilities for:

- providing information to data subjects under [Article 13 and 14](#) of the GDPR
- responding to data subject requests under [Articles 15-22](#) of the GDPR
- notifying the Information Commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing under [Article 30](#) of the GDPR
- carrying out any required Data Protection Impact Assessment
- The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 21.2 - 21.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Schedule 2b should be used instead of Clause 21.1-21.15 and Schedule 2a.