



Department
for Environment
Food & Rural Affairs

Contract for the Provision of Food Boxes to Vulnerable People in Self- Isolation Following Covid-19

23 April 2020

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

AND

- (2) BFS Group Limited (t/a Bidfood) registered in England and Wales under company number 0239718 whose registered office is 814 Leigh Road, Slough, England SL1 4BD (the “**Contractor**”),

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

WHEREAS

- A. The Authority requires the urgent provision of food boxes to vulnerable people in self-isolation following Covid-19 and the Contractor has agreed to provide this service in accordance with these terms and conditions set out in this contract (the “**Contract**”).
- B. This Contract relates to the provision of food boxes across England only, as further detailed in the Specification. The Authority expects that the Scottish Government, Northern Ireland Executive’s DAERA and Welsh Government may wish to contract with the Contractor on substantially the same basis as set out in this Contract; however, any such contract will be independent to this Contract.
- C. The services required by the Authority will be delivered by the Contractor on a dual contractor basis with Brake Bros Limited (the “**Alternative Contractor**”) as further detailed within this Contract.
- D. This Contract has been awarded to the Contractor using the negotiated procedure without prior publication pursuant to Regulation 32 of the Public Contracts Regulations 2015, on the basis that the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with for reasons of extreme urgency brought about by events unforeseeable by the Authority, namely the outbreak of Covid-19.
- E. The Authority has previously entered into Letters of Intent with the Contractor in relation to the services described at Recital A above (the “**Letters of Intent**”).

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The “**Contract**” comprises the following:

Section 1:	Form of Contract
Section 2:	Terms and Conditions

Schedule 1:	Specification
Schedule 2:	Prices
Schedule 3:	Change Control

- 1.2 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 formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("**Bravo**").
- 1.3 Subject to paragraph 1.5 below, the Contract starts on the date that provision of the Services began pursuant to the Letters of Intent, namely 27 March 2020 (the "**Commencement Date**") and ends on 3 July 2020 (the "**End Date**") unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract for a period of up to 3 Months ("**Extension**") on giving 30 days' written notice to the Contractor. The terms of the Contract will apply throughout the period of any Extension.
- 1.5 The Parties agree that:
 - (a) the services provided under the Letters of Intent will, ab initio, be deemed to form part of the Services;
 - (b) any payments made by the Authority to the Contractor under the Letters of Intent will be deemed to be payment in respect of the Services to be performed under this Contract; and
 - (c) the Letters of Intent are hereby terminated on the date of signature of this Contract and each of the Parties are henceforth released from any liability thereunder, save in respect of payments already due under those Letters of Intent.

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TERMS AND CONDITIONS

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A GENERAL PROVISIONS

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.

“**Anticipated Volume**” means the anticipated volume of Food Boxes to be delivered in accordance with this Contract as further detailed in the Specification.

“**Authorised Representative**” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“**Authority Software**” means software which is owned by or licensed to the Authority (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.

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

which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

“**Bravo**” has the meaning given in paragraph 1.2 of the Form of Contract.

“**Breach of Security**” means the occurrence of unauthorised access to or use of any ICT or data (including Extremely Vulnerable Individuals Data) used by the Authority in connection with the Contract.

“**Breakage Costs**” means losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract pursuant to clause H3.1, but only to the extent that:

- (a) the losses are incurred in respect of the provision of Services, including:
 - i. any goods ordered or Sub-Contracts placed that cannot be cancelled without such losses being incurred; and
 - ii. the cost of demobilisation; and
- (b) the losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;
- (c) the Contractor and any relevant Sub-Contractor have each used their reasonable endeavours to mitigate the losses; and
- (d) the losses have not been otherwise compensated by the Authority through alternative means (including the Letters of Intent).

“**Bulk Delivery**” means a delivery of 10-50 Food Boxes at the same time and to the same destination.

“**CCN**” means a contract change notice in the form set out in Schedule 3.

“**Commencement Date**” means the date set out in paragraph 1.3 of the Form of Contract.

“**Commercially Sensitive Information**” means the information in Schedules 1 and 2, as well as any Personal Data within this Contract.

“**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. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (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**” has the meaning given in paragraph 1.1 of the Form of Contract.

“**Contract Period**” means the period from the commencement of the Services 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 Contract in accordance with the Law or the Contract.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in Regulation 3 of the Regulations.

“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) 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.

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

“Controller” has the meaning given 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 Controller” has the meaning given in the GDPR.

“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 (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable Law about the processing of Personal Data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

“Data Sharing Agreement” has the meaning given in clause E1.3.

“Data Subject” has the meaning given in the GDPR.

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

“Delivered Food Box” means a Food Box that has been successfully delivered to an Extremely Vulnerable Individual or placed outside the premises of the Extremely Vulnerable Individual.

“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 NICs 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 2018” means the Data Protection Act 2018.

“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 the Contract ends set out in paragraph 1.3 of the Form of Contract.

“Equipment” means the equipment, consumables, plant, materials and such other items used by the Contractor in the delivery of the Services.

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

“Extremely Vulnerable Individual(s)” means those individuals identified as being vulnerable and in self-isolation by the Authority, following collation of data provided by the Department of Health and Social Care and self-selected by GP surgeries across England.

“Extremely Vulnerable Individuals Data” means the data, including Personal Data, on the Extremely Vulnerable Individuals that is shared between the Contractor and the Alternative Contractor, and which has been transferred to the Alternative Contractor by the Cabinet Office (as Data Controller) acting through the Government Digital Service (**“GDS”**).

“Financial Distress Event” has the meaning given to it in clause E11.1.

“Financial Distress Remediation Plan” has the meaning given to it in clause E11.2.

“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.

“Food Box” means a well-packaged box (or boxes) of essential and non-perishable food items of sufficient quality, as further detailed in the Specification.

“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.

“Force Majeure Notice” means a notice issued in accordance with clause G3.2.

“Form of Contract” means Section 1 of the Contract.

“Frustrated Delivery” means a delivery categorised as a code 3, 4 or 5 in accordance with the process set out at paragraph 11 of the Specification.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).

“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 NICs.

“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.

“Goods” means the Food Boxes supplied by the Contractor (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

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

“HMRC” means HM Revenue & Customs.

“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.

“ICT Environment” means the Authority System and the Contractor System.

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

“Initial Demand” has the meaning given in paragraph 14.8 of the Specification.

“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 Performance Indicator” has the meaning given to it in paragraph 14 of the Specification.

“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, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

“**LED**” means Law Enforcement Directive (Directive (EU) 2016/680).

“**Letters of Intent**” has the meaning given to it in Recital E.

“**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.

“**Material Breach**” means a breach (including an anticipatory breach) expressly defined as such within this Contract or that is otherwise serious in the widest sense of having a serious effect on the benefit which the Authority 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 or E10.

“**Month**” means calendar month.

“**NICs**” means National Insurance Contributions.

“**Occasion of Tax Non-Compliance**” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“**Open Book Data**” has the meaning given in clause C1A.

“**Personal Data**” has the meaning given in the GDPR.

“**Personal Data Breach**” has the meaning given in the GDPR.

“**Price**” means the amount (excluding any applicable VAT) payable by the Authority to the Contractor under the Contract, as set out in Schedule 2, for the full and proper performance by the Contractor of its obligations under the Contract.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- (b) 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;
- (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;
- (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.

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

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

“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 Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“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 the Contract or any other affairs of the Authority.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any goods and/or 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.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“Services” means the services set out in Schedule 1 (including any modified or alternative services).

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule 1.

“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 servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

“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.

“Transparency Report” means a report of that name to be submitted by the Contractor to the Authority in accordance with clauses E6.2 to E6.4.

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

“Undelivered Food Box” means a Food Box falling within delivery codes 3 to 6 as set out in the Specification.

“Valid Invoice” means an invoice for provision of the Service which includes all appropriate data and references as reasonably requested by the Authority, including a detailed breakdown of Delivered Food Boxes and Undelivered Food Boxes.

“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.

“Volume Commitment” has the meaning given to it in paragraph 9 of the Specification.

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

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 Authority’s Obligations

A2.1 Save 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 upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority 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 Authority.

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 or by communication via Bravo.

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 (with a copy sent by email) 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 Authority:

Contact Name: [REDACTED] (Acting Deputy Director Food Security, Supply Chain & Industrial Strategy);

Address: 2 Marsham Street, London SW1P 4DF; and

Email: [REDACTED].

- (b) For the Contractor:

Contact Name: [REDACTED]

Address: 814 Leigh Road, Slough SL1 4BD; and

Email: [REDACTED]

A5 Mistakes in Information

A5.1 The Contractor is responsible for the accuracy of all documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority 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 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 Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority 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 Authority.

B. THE SERVICES

B1 Specification

- B1.1 The Contractor shall provide the Goods and Services in accordance with this Contract, and in consideration of the Contractor supplying such Goods and Services, the Contractor shall be paid the Price in accordance with Schedule 2.
- B1.2 Subject to clauses B2.4 and B2.5 below, the Contractor is not granted any sole or exclusive rights in relation to the provision of the Services and the Authority reserves the right to appoint any other contractor to provide part or all of the Services.

B2 Dual Contractor Basis

- B2.1 The Contractor shall provide the Service on a dual contractor basis with the Alternative Contractor as further detailed in the Specification. The Contractor therefore commits to:
- (a) deliver the Services apportioned to it (for the avoidance of doubt, this shall amount to 50% of the Anticipated Volume);
 - (b) in the event that the Alternative Contractor is unable to deliver its proportion of the Anticipated Volume under its own contract with the Authority (including, for the avoidance of doubt, in circumstances where the Alternative Contractor asserts under its own contract with the Authority that it is unable to perform as a result of a Force Majeure Event), the Contractor shall promptly and in any event within 24 hours notify the Authority of such circumstances and use its best endeavours to work collaboratively with the Alternative Contractor to deliver the remaining proportion of the Anticipated Volume, and the terms of this Contract shall apply to the delivery by the Contractor of such increased proportion of the Anticipated Volume; and
 - (c) in the event that the Contractor is unable to deliver its proportion of the Anticipated Volume under this Contract (including, for the avoidance of doubt, in circumstances where the Contractor asserts that it is unable to perform as a result of a Force Majeure Event), the Contractor shall promptly and in any event within 24 hours notify the Authority of such circumstances and use its best endeavours to work collaboratively with the Alternative Contractor to allow the Alternative Contractor to deliver the remaining proportion of the Anticipated Volume.
- B2.2 For the avoidance of doubt, clause B2.1 represents a fundamental aspect of this Contract. Any failure by the Contractor to meet its 50% commitment under this Contract and/or to effectively collaborate with the Alternative Contractor to deliver any shortfall in the Anticipated Volume will represent a Material Breach of this Contract giving rise to the consequences set out in clause F3.1.
- B2.3 Both Parties acknowledge that the dual contractor nature of this arrangement requires the Contractor and Alternative Contractor to work together in relation to the provision of the Services. The Contractor shall provide the Services in accordance with all relevant Laws, including competition laws, but accepts no liability in relation to any potential breach of competition laws in providing the Services.
- B2.4 Subject to clause B2.5, the Contractor and Alternative Contractor are appointed under their respective contracts with the Authority as the exclusive suppliers of the Service up to the Anticipated Volume. For the avoidance of doubt, should the volume of Food Boxes required during the Contract Period exceed the Anticipated Volume, the Authority reserves the right to appoint another contractor to provide such additional volume.
- B2.5 If and to the extent that the Contractor is unable or unwilling to perform the Service in accordance with the requirements of this Contract (including, for the avoidance of doubt, as

a result of the occurrence of a Force Majeure Event), and the Alternative Contractor does not perform in accordance with clause B2.1(b), clause B2.4 shall not apply and the Authority reserves the right to appoint another contractor to provide the Service.

B3 Delivery

B3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle and delivered at the premises of the Extremely Vulnerable Individual.

B3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

B3.3-B3.8 [NOT USED]

B3.9 The Contractor shall co-ordinate its activities in supplying the Services with those of the Alternative Contractor and any other contractor(s) engaged by the Authority, including, where applicable, by way of compliance with clauses H8 to H10.

B3.10 The Contractor undertakes to supply the Goods and Services as set out in the Specification.

B4 Ownership

B4.1 [NOT USED]

B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of payment.

B5 Non-Delivery

B5.1 In the event of an Undelivered Food Box, the Contractor must follow the process detailed in the Specification in relation to redelivery.

B5.2 [NOT USED]

B6 Packaging

B6.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with all applicable Laws.

B6.2-B6.5 [NOT USED]

B7 [NOT USED]

B8 Provision and Removal of Equipment

B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.

B8.2-B8.8 [NOT USED]

B9 Goods Delivery

B9.1 The Contractor shall perform its obligations under the Contract:

- (a) using appropriately experienced, qualified and trained personnel acting with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

B9.2 The Contractor shall ensure the Goods:

- (a) conform in all respects with the Specification;
- (b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification;
- (c) conform in all respects with all applicable Laws; and
- (d) are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

B10 Service Delivery

B10.1 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 Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B10.2 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.

B10.3-B10.6 [NOT USED]

B11-B16 [NOT USED]

B17 Employment Provisions

B17.1 The Parties do not consider that the commencement, termination or expiry of all or any part of this Contract or of the provision of any Services pursuant to this Contract will operate to transfer the employment of any employee or other person whether under TUPE or otherwise.

B17.2 Notwithstanding the foregoing the Contractor shall indemnify and keep indemnified the Authority (for itself and any Replacement Contractor) against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against the Authority by virtue of the operation or alleged operation of TUPE in connection with the entry into or termination of this Contract or the termination of the provision of any of the Services (or any part of the Services) and which is made or brought by or on behalf of any Staff and relates to circumstances or events arising or occurring at any time (including any dismissal or alleged dismissal of any such person by the Authority or a Replacement Contractor).

C PAYMENT

C1 Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

C1A Open Book Data

C1A.1 During the Contract Period, and for a period of 7 years after the Contractor's obligations under the Contract have come to an end, the Contractor shall maintain and retain in accordance with Good Industry Practice:

- (a) complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the costs already paid or payable and forecast to be paid during the remainder of the Contract Period, including evidence of payment by the Contractor to the Contractor's employees and downstream suppliers; and
- (b) evidence to demonstrate that the cost of a Food Box represents good value for money in all the prevailing circumstances having regard to the current Covid-19 crisis,

together, the "**Open Book Data**".

C1A.2 During the Contract Period, and for a period of 7 years after the end of the Contract Period, the Contractor shall disclose to, and allow the Authority and/or any appropriate audit body access to the Open Book Data.

C2 Payment and VAT

C2.1 The Contractor shall submit invoices to the Authority on a weekly basis by 5pm each Monday, or if the Monday is not a Working Day, by 5pm on the next Working Day. The date of Receipt of such invoices for the purposes of clause C2.18 shall be the date of arrival of the invoice if received before 10am on that date, or the next Working Day if received after 10am.

C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to applicable VAT chargeable on the value of the Services supplied in accordance with the 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 Authority 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 Authority in writing.

C2.5-C2.9 [NOT USED]

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority 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-C2.15 [NOT USED]

- C2.16 If the Authority 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 Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority 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 Subject to clause C2.24, the Authority shall pay all sums due to the Contractor within 7 days of Receipt of a Valid Invoice. Valid Invoices must be submitted for payment electronically in PDF format to:

████████████████████
████████████████████ and
████████████████████

- C2.19 If a payment of an undisputed amount is not made by the Authority within 14 days of Receipt of a Valid Invoice, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the Receipt of a Valid Invoice.
- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.22 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.
- C2.23 The Authority shall not pay an invoice which is not a Valid Invoice.
- C2.24 The Authority shall have no obligation to pay an invoice which is not submitted in accordance with the process set out in this clause C2 until such process is fully complied with, and in such circumstances the due date for payment shall be 7 days after Receipt by the Authority of a Valid Invoice submitted in accordance with the process set out in this clause C2.

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 Authority (including any sum which the Contractor 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 Contractor from the Authority under the Contract or under any other agreement with the Authority 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 Authority 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 Authority 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 Schedule 2 and clause F6 (Variation), the Price shall apply 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.

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 Authority 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 Authority on request.

D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, 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 Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority 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.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

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 Authority's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority 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 Clauses E1 and E2 confer benefits on persons named in those provisions (together "**Third Party Provisions**") other than the Parties (each person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").

- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without approval by the Authority.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

D4 Health and Safety

- D4.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable Law regarding health and safety.
- D4.2 [NOT USED]

D5 Environmental Requirements

- D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("**Environmental Policies**") which require the Authority through its procurement and management of suppliers to:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
 - (b) phase out the use of ozone depleting substances;
 - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
 - (e) reduce fuel emissions wherever possible;
 - (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
 - (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).
- D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:
- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
 - (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential,

unless given written permission by the Authority to do so.

- D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.
- D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.
- D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.
- D5.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.
- D5.7 The Contractor shall:
- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
 - (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

D6 [NOT USED]

E PROTECTION OF INFORMATION

E1 Extremely Vulnerable Individuals Data

- E1.1A Where under this Section E the Contractor has an obligation to inform, notify or provide details to the Authority, the Contractor shall ensure that any such communication to the Authority is also copied to the Cabinet Office (as Data Controller) acting through the GDS. The Contractor acknowledges and agrees that the obligations set out in these Clauses E1 and E2 are for the benefit of the Authority and the Cabinet Office (as Data Controller) acting through the GDS.
- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Extremely Vulnerable Individuals Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Extremely Vulnerable Individuals Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by GDS.
- E1.3 On or around the date of this Contract, the Alternative Contractor entered into a data sharing agreement with the Cabinet Office (as Data Controller) acting through the GDS (the "**Data Sharing Agreement**"). Pursuant to the terms of that arrangement, the Cabinet Office acting

through the GDS shall share Extremely Vulnerable Individuals Data with the Alternative Contractor, and the Alternative Contractor shall share with the Contractor the Extremely Vulnerable Individuals Data to the extent necessary to enable the Contractor to perform the Services pursuant to the terms of this Contract.

- E1.4 The Contractor shall preserve the integrity of Extremely Vulnerable Individuals Data and prevent the corruption or loss of Extremely Vulnerable Individuals Data.
- E1.4A The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
- (a) is in accordance with Good Industry Practice and Law;
 - (b) complies with Security Policy Framework; and
 - (c) meets any specific security threats to the Contractor System.
- E1.4B [NOT USED]
- E1.5 The Contractor shall perform secure back-ups of all Extremely Vulnerable Individuals 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 Authority or any third party nominated by the Authority immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Extremely Vulnerable Individuals Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Extremely Vulnerable Individuals Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Extremely Vulnerable Individuals Data and the Contractor shall do so promptly; and/or
 - (b) liaise with a third party (including but not limited to the Cabinet Office (as Data Controller)) acting through the GDS to restore or procure the restoration of Extremely Vulnerable Individuals Data, and the Contractor repay to the Authority any reasonable expenses the Authority incurs in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Extremely Vulnerable Individuals Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- E1.9 Either Party shall notify the other immediately upon becoming aware of any Breach of Security.
- E1.10 Upon becoming aware of any actual, potential or attempted Breach of Security, the Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such breach and of the steps taken in respect thereof. The Contractor shall immediately take all reasonable steps necessary to:
- (a) remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and

(b) prevent an equivalent breach in the future.

E1.11 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 3.

E2 Data Protection

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation and in respect of any business contact information shared by the Parties pursuant to this Contract, each Party is a Controller of the business contact information provided to it by the other Party.

E2.2 The Contractor shall only process Extremely Vulnerable Individuals Data necessary to perform the Services.

E2.2A The Contractor shall not, share any Personal Data relating to Extremely Vulnerable Individuals with the Authority without first entering into a data sharing agreement with the Authority setting out the basis on which Personal Data relating to Extremely Vulnerable Individuals will be shared between the Parties. The Parties agree that they shall use best endeavours to enter into such data sharing agreement within 10 Working Days of the date of this Contract.

E2.3 The Contractor shall at all times comply with Data Protection Legislation in relation to its processing of Personal Data.

E2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only to extent necessary to perform the Services unless the Contractor is required to do otherwise by Law. If it is so required the Contractor 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;
- (c) ensure that:
 - (i) the Staff do not process Personal Data except in accordance with this Contract; and
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the UK or the European Union; and
- (e) delete Extremely Vulnerable Individuals Data (and any copies of it) on termination or expiry of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 The Contractor acknowledges and agrees that the nature of the Services under this Contract may require the Contractor to share certain information with the Cabinet Office (as

Data Controller) acting through the GDS. Where the Contractor:

- (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;
- (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,

it shall without undue delay provide all necessary information to the Cabinet Office (as Data Controller) acting through the GDS.

E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.

E2.7 [NOT USED]

E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

E2.11 [NOT USED]

E2.12 [NOT USED]

E2.13 [NOT USED]

E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E2.16 [NOT USED]

E3 Official Secrets Acts and Finance Act

E3.1 The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

E4 Confidential Information

- E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the 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.
- E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.3 [NOT USED]
- E4.4 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.5 The Contractor may only disclose the Authority'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.
- E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.7 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.
- E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority'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 Authority has used its resources;
 - (c) to any Crown Body or any Contracting Authority 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 Authority; and/or

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

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority 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.

E4.9 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.

E4.10 The Authority shall procure that any government department, Contracting Authority, 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 Authority's obligations of confidentiality.

E4.11 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on notice to the Contractor.

E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, both Parties shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.13 In the event of any Breach of Security in relation to Confidential Information and/or data obtained in the supply of the Services, the relevant Party shall:

- (a) immediately notify the other Party;
- (b) keep a record of such breaches;
- (c) use its best endeavours to recover such Confidential Information or data however it may be recorded; and
- (d) co-operate with the other Party in any investigation as a result of any Breach of Security in relation to Confidential Information or data.

E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Authority 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.

E6 Transparency, Reporting and Publicity

E6.1 The Contractor recognises that the Authority is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Contractor shall comply with the provisions of clauses E6.2 to E6.4 in order to assist the Authority with its compliance with its obligations under that PPN.

E6.2 Without prejudice to the Contractor's reporting requirements set out elsewhere in this Contract, the Authority shall notify the Contractor of the required content, requirements and format of the expected Transparency Reports. Within 7 days of such notification, the Contractor shall submit to the Authority for approval (such approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the notified content, requirements and format. The Contractor shall not be obliged to include any information in the Transparency Reports which is not required under any other provision of this Contract.

E6.3 If the Authority rejects any proposed Transparency Report submitted by the Contractor, the Contractor shall submit a revised version of the relevant report for further approval by the Authority within 5 days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a dispute, for the Purposes of clause I2 (Dispute Resolution).

E6.4 The Contractor shall provide accurate and up-to-date versions of each Transparency Report to the Authority on a monthly basis.

E6.5 [NOT USED]

E6.6 Without prejudice to the Authority'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 (including agreement on the format and content of any publicity). The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with this clause E6.6.

E7 Security

E7.1-E7.2 [NOT USED]

- E7.3 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.
- E7.4 Notwithstanding clause E7.3, 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 Extremely Vulnerable Individuals Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 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 Extremely Vulnerable Individuals Data (whilst the Extremely Vulnerable Individuals Data was under the control of the Contractor); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or Extremely Vulnerable Individuals Data (whilst the Extremely Vulnerable Individuals Data was under the control of the Authority).

E8 [NOT USED]

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 Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, 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 Authority 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 Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority 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 Authority in writing of such fact within 5 Working Days of its occurrence; and

- (b) promptly give the Authority:
 - 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 Authority 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 NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs 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.

E11 Financial Monitoring

E11.1 The Contractor shall immediately notify the Authority in writing of any material adverse change to its financial circumstances insofar as such material adverse change materially affects the Contractor's ability to perform and deliver the Services (a "**Financial Distress Event**"), or any fact, circumstance or matter which could reasonably be considered likely to cause such a Financial Distress Event.

E11.2 The Contractor shall submit to the Authority for approval a remediation plan as soon as reasonably practicable and in any event, within 10 Working Days of the initial notification of the Financial Distress Event. For the avoidance of doubt, the remediation plan may include an obligation on the Contractor to provide the Authority with additional financial security, including a parent company guarantee if appropriate, on terms to be agreed by the Authority. The Parties shall act reasonably in agreeing the remediation plan (once agreed, a "**Financial Distress Remediation Plan**").

E11.3 The Contractor shall comply with the Financial Distress Remediation Plan and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

E11.4 The Authority shall be entitled to terminate this Contract if:

- (a) the Contractor fails to notify the Authority of a Financial Distress Event in accordance with clause E11.1, which shall constitute a Material Breach;
- (b) the Parties fail to agree a Financial Distress Remediation Plan in accordance with clause E11.2; and/or
- (c) the Contractor fails to comply with, or achieve the requirements set out in, the terms of the Financial Distress Remediation Plan in accordance with clause E11.3, which shall constitute a Default. In such circumstances, any remediation period applicable under clause H2.1(a) shall be no longer than 10 days.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a Default by the Authority, the Contractor shall at its own expense carry out the Services in accordance with the requirements of the Contract as further detailed in the Specification.

F1.2-F1.6 [NOT USED]

F2 Monitoring of Contract Performance

F2.1 The Contractor shall comply with the delivery reporting and forecasting provisions set out in the Specification, and 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.

F2.2 The Contractor must attend contract management meetings in accordance with the Specification.

F2.3-F2.5 [NOT USED]

F2.6 The Contractor shall, within 2 Working Days of any meeting provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified at the meeting.

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 Contract identified by the meetings, 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.

F3 Remedies for Inadequate Performance

F3.1 If the Authority 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 Authority'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 Authority 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 Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party in

accordance with clause F3.1 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 Authority 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 Authority 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 Authority may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- 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 Authority and to prevent such failure from recurring; and
 - (b) immediately give the Authority such information as the Authority 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 Authority.
- 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 Authority, the Authority 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 The Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without the Authority's prior written approval. All such documents shall be evidenced in writing and shown to the Authority 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 Authority on request in accordance with the provisions of clause E9. If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority 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 Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:
- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
 - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4(a) in any Sub-Contract which it awards; and
 - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.

F4.5-F4.9 [NOT USED]

F4.10 The Authority shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without the Contractor's prior written approval. For the avoidance of doubt, this clause does not prevent the Authority from engaging any alternative contractor to carry out the Services in accordance with the provisions of this Contract.

F4.11-F13 [NOT USED]

F4.14 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.

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 date of signature of this Contract, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 6.

F6.2 The Authority 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 Authority. 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 Authority 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).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CNN shall be made via electronic signature as described in paragraph 1.2 of the Form of Contract.

F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Contractor shall be deemed to warrant and represent that the CNN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

F6.6 The provisions of clauses F6.4 and F6.5 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 Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN 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 agreements (including the Letter of Intent), 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.

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, or that of its employees, agents or sub-contractors;
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) 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;
- (d) any breach of clauses D1, E1, E2 or E4;
- (e) [NOT USED]; or
- (f) 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 Authority and keep the Authority 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 wrongful supply, or the late or purported supply, of the Services or the wrongful performance or non-performance by the Contractor of its obligations under the Contract, 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 wrongful act or omission of the Contractor.

G1.3 Subject to clause G1.1:

- (a) the Contractor's aggregate liability in respect of the Contract shall not exceed £5,000,000; and
- (b) the Authority's liability in respect of the Contract shall not exceed the Price due to the Contractor together with, if applicable, Breakage Costs and/or any payments due by the Authority in respect of residual stock in accordance with paragraph 9.8 of the Specification, provided that any such payments are set out in Valid Invoices.

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 Authority or by breach by the Authority of its obligations under the Contract.

G1.5 The Authority may recover from the Contractor the following direct losses incurred by the Authority 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 Authority, including costs relating to time spent by or on behalf of the Authority 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 Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clause G1.1, 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 Authority, the Contractor shall take out and maintain, or procure the taking out and maintenance of, with a reputable insurance company:

- (a) professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
- (b) public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000);
- (c) employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000); and
- (d) any other appropriate insurance policies as may be required by applicable law.

G1.8 The Contractor shall ensure that each of the insurances referred to in clause G1.7 is effective no later than the commencement of Services. 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.

G1.9 The Contractor 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 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 Authority 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 date of signature of this Contract and for the Contract Period that:

- (a) it has full capacity and authority 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 date of signature of this Contract, any offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority 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) [NOT USED]
- (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 Authority 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.

G3 Force Majeure

G3.1 Subject to the remaining provisions of this clause G3 and save as expressly set out in this Contract, 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. The Authority shall be entitled to request any further information and/or evidence necessary from the Contractor to support the Contractor's claim that a Force Majeure Event has occurred.
- 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.
- G3.3A Both Parties acknowledge that the Contract has been procured on an urgent basis owing to the outbreak of Covid-19 and the Contractor agrees to have in place throughout the Contract Period (and to implement as required) appropriate contingency measures to mitigate the risk of any events associated with the outbreak impacting on its performance under this 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 Authority shall at all times following the occurrence of a Force Majeure Event and during its subsistence use its reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event.
- G3.5A The Contractor shall at all times following the occurrence of a Force Majeure Event and during its subsistence use its best endeavours to prevent and mitigate the effects of the Force Majeure Event, including (where appropriate) in accordance with clauses B2.1(b) and G3.3A.
- 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, although the Contractor acknowledges that in such circumstances its right to payment is limited in accordance with clause G3.6(b) below;
 - ii) neither Party shall be liable for any Default arising as a result of such failure; and
 - iii) notwithstanding clause B2.4, the Authority shall be entitled to appoint another Contractor to provide the Services in accordance with clause B2.5;

- (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.

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 Authority 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 section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a) to (g) occurs under the law of any other jurisdiction.

H1.2 The Authority 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 Authority 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 Taxes Act 2010 ("**Change of Control**"). The Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, 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 Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 7 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 Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

H3.1 The Authority may terminate the Contract at any time by giving 45 days' notice to the Contractor.

H4 [NOT USED]

H5 Consequences of Expiry or Termination

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

H5.2 If the Contract is terminated under clause H2 the Authority 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 Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3, the Authority shall pay to the Contractor:

- (a) any amounts due for Services provided by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority; and
- (b) any applicable Breakage Costs.

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 Authority or the Contractor under clauses C1A (Open Book Data), C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts and Finance Act), E4 (Confidential Information), E5 (Freedom of Information), E9 (Audit), F8 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination), I1 (Governing Law and Jurisdiction) and paragraph 9.1 of Schedule 1 (Specification).

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 Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority 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 Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

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 Authority all Confidential Information and Personal Data 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 Goods and Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;

- (c) [NOT USED];
- (d) assist and co-operate with the Authority 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 Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H7.2 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority 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.

H8 Retendering and Handover

H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H8.2 The Authority 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 Authority 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 Authority; and that they shall not use it for any other purpose.

H8.4 The Contractor indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.

H8.5 [NOT USED]

H8.6 [NOT USED]

H8.7 The Contractor shall co-operate fully with the Authority 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 Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, 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 Authority.

H9 Exit Management

H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

H10 Exit Procedures

H10.1 Where the Authority 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 Authority 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 Schedule 2 or forming the basis for the Price.

H10.3-H10.4 [NOT USED]

H11 [NOT USED]**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 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.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to resolve any issues or reported problems in relation to this Contract and shall work collaboratively to mitigate any damage to the reputation or goodwill of the other Party's business. The Parties acknowledge that the Services are provided on a dual contractor basis and that it may therefore be necessary or desirable to involve the Alternative Contractor in such discussions.

I2.1A In the event of a dispute arising out of or in connection with the Contract, the Parties shall attempt to negotiate a settlement to any such dispute 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 of the Contractor and the commercial director of the Authority.

- 12.2 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.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 either Party may refer it to mediation pursuant to the procedure set out in clause 12.5.
- 12.4 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.
- 12.5 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 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 12.6.
- 12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:
- (a) the Authority 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 12.7;
 - (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority 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 Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority 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 Authority 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 I2.7(b) 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 Authority under clause I2.7(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.

This Contract has been entered into on the date stated at the beginning of it.

Authority

SIGNED for and on behalf of

**THE SECRETARY OF STATE FOR THE
ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

Authorised Signatory:

Signature:

Contractor

SIGNED for and on behalf of

BFS GROUP LIMITED

Authorised Signatory:

Signature:

SCHEDULE 1 – SPECIFICATION

1. Social value priorities

- 1.1 The objective of this Contract is to ensure that up to 1.5m Extremely Vulnerable Individuals across England are able to secure nutritionally balanced food during the coronavirus Covid-19 outbreak. This shall be by way of the provision of Food Boxes to such individuals, to be delivered by the Contractor on a weekly basis during the Contract Period.
- 1.2 The Authority's key social value priorities associated with this Contract are to:
- (a) support clinically Extremely Vulnerable Individuals in society;
 - (b) prevent the spread of Covid-19 and reduce pressure on the NHS, saving lives; and
 - (c) obtain value for money for the taxpayer and contract for services that will employ people and confer economic benefit during a period of economic downturn and national emergency.

2 Background and Scope: Covid-19 Food Box Scheme and Shielding

- 2.1 The NHS in England estimates that there are approximately 1.51 million people with underlying health conditions that place them in the highest at-risk cohort. These people will be expected to remain at home and self-isolate for the duration of the pandemic (12 – 14 weeks).
- 2.2 The UK Government is providing a support package to ensure that Extremely Vulnerable Individuals have food and medicines where they do not have family or friends who will be able to provide delivery of food and medicine by a process of 'Shielding'. Shielding is a measure to protect extremely vulnerable people by minimising interaction between those who are extremely vulnerable and others. This means that those who are extremely vulnerable should not leave their homes, and within their homes should minimise all non-essential contact with other members of their household. This is to protect those who are at very high risk of severe illness from Covid-19 from coming into contact with the virus.
- 2.3 As at 1 April 2020 the UK Government is strongly advising people with serious underlying health conditions (listed below), which put them at very high risk of severe illness from Covid-19, to rigorously follow shielding measures in order to keep themselves safe.
- 2.4 The UK Government has committed to support Extremely Vulnerable Individuals during the Covid-19 pandemic, part of this support is the provision of nutritionally balanced food delivered to their door. For the avoidance of doubt, the term "nutritionally balanced" used throughout this Schedule 1 shall be defined by the Authority.
- 2.5 The service to be delivered under this Contract (the "**Service**") is for the contents of up to 440,000 nutritionally balanced Food Boxes per week (the "**Anticipated Volume**") to be provided, warehoused, picked, packed and then delivered by the Contractor to the homes of Extremely Vulnerable Individuals throughout the Contract Period (and for the purposes of this description, Contract Period shall include the period of time under which the Contractor has delivered the Services pursuant to the Letters of Intent). It is **mandatory** that at all times the highest standards of hygiene and service to such Extremely Vulnerable Individuals is maintained by the Contractor when providing the Services. The Service must be delivered in accordance with the requirements set out in this Schedule 1.

2.6 The Authority acknowledges that the Service is to be provided on a dual contractor basis as described in clause B2 of the Contract. For the avoidance of doubt, the Contractor is therefore obliged under this Contract to both:

- (a) deliver 50% of the Anticipated Volume, with the remaining 50% to be allocated to the Alternative Contractor. For example, for a period of 14 weeks beginning with the date of commencement of the Services under the first Letter of Intent:
 - i. up to 2 ██████ Food Boxes will be procured, stored, picked and delivered by the Contractor; and
 - ii. up to ██████ Food Boxes will be procured, stored, picked and delivered by the Alternative Contractor;

- (b) in the event that the Alternative Contractor is, for any reason, unable to deliver its proportion of the Anticipated Volume under its own contract with the Authority, the Contractor shall promptly and in any event within 24 hours notify the Authority of such circumstances and use its best endeavours to deliver the remaining proportion of the Anticipated Volume. In this case, the additional volume of Food Boxes allocated to the Contractor will be agreed with the Authority and the Contractor will take liability for such Food Boxes as if those Food Boxes formed part of its own allocation (and for the avoidance of doubt, the Contractor's performance against the KPIs will be measured against such increased allocation). For example:
 - i. 2 ██████ Food Boxes allocated to Alternative Contractor in April. In May, Alternative Contractor is no longer able to make deliveries and has ██████ Food Boxes still to deliver.
 - ii. The ██████ Food Boxes will be re-allocated to the Contractor to deliver and the Contractor shall use its best endeavours to deliver those ██████ Food Boxes; and

- (c) in the event that the Contractor is, for any reason, unable to deliver its proportion of the Anticipated Volume under this Contract, the Contractor shall promptly and in any event within 24 hours notify the Authority of such circumstances and use its best endeavours to work collaboratively with the Alternative Contractor to allow the Alternative Contractor to deliver the remaining proportion of the Anticipated Volume. In this case, the decreased volume of Food Boxes allocated to the Contractor will be agreed with the Authority (and for the avoidance of doubt, the Contractor's performance against the KPIs will be measured against such increased allocation). For example:
 - i. ██████ Food Boxes allocated to Contractor in April. In May, Contractor is no longer able to make deliveries and has ██████ Food Boxes still to deliver.
 - ii. The ██████ Food Boxes will be re-allocated to the Alternative Contractor to deliver under its own contract with the Authority.

2.7 The Authority makes no guarantee as to volume of Food Boxes beyond the Volume Commitment set out in paragraph 9 below.

2.8 The Contractor and Alternative Contractor have been appointed on an exclusive basis to provide the Services up to the Anticipated Volume in accordance with clause B2.4. For the avoidance of doubt, the Authority reserves the right to appoint another contractor to deliver Food Boxes:

- (a) in excess of the Anticipated Volume (see clause B2.4); and

- (b) if and to the extent that the Contractor is unable or unwilling to perform the Service in accordance with the requirements of this Contract and the Alternative Contractor is unable or unwilling to perform under the dual contractor arrangement (see clause B2.5).

3 Overview of Requirement and Contract Structure

- 3.1 The Service to be delivered under this Contract is as described in paragraph 2.5.
- 3.2 A further service may be required for the provision of Food Boxes for Extremely Vulnerable Individuals in Scotland, Northern Ireland and Wales. It will be for the relevant devolved authorities (being the Scottish Government, the Northern Ireland Executive's Department of Agriculture, Environment and Rural Affairs and the Welsh Government respectively) to identify and contract to fulfil their own requirements. Separate contracts will be put in place to satisfy these requirements as required, and the Authority will work with each devolved authority to ensure that the terms and conditions in each contract are aligned with this Contract to the extent possible.

4 The Authority

- 4.1 The Authority is the UK Government department responsible for safeguarding our natural environment, supporting our world-leading food and farming industry, and sustaining a thriving rural economy. The Authority's broad remit plays a major role in people's day-to-day life, from the food we eat, and the air we breathe, to the water we drink.
- 4.2 The funding for all requirements across the Authority, Scottish Government, DAERA, and Welsh Government is from the Covid-19 emergency funds from Her Majesty's Treasury.
- 4.3 The Scottish Government, Northern Ireland Executive's DAERA, and Welsh Government, may opt to independently contract with the Contractor based on their own terms and conditions, specification and pricing model. The Authority intends to work together with those administrations to promote an aligned solution across the UK so far as possible.

5 Contract Stakeholder Information and Their Role in the Service

- 5.1 The Ministry of Housing, Communities and Local Government ("MHCLG"): The UK Government department for housing, communities and local government in England. The MHCLG is the main internal customer to the Authority for the core requirement. There are counterpart organisations within the constituent countries of the UK. As part of the delivery of the Service the MHCLG will need to communicate directly with the Contractor and vice versa. All communications between the MHCLG and the Contractor must also copy in the Authority Senior Responsible Officer (SRO) and the Authority Contract manager.
- 5.2 The Department of Health and Social Care ("DHSC"): A department of Her Majesty's Government, responsible for government policy on health and adult social care matters in England. The department carries out some of its work through arms-length bodies (ALBs), including executive non-departmental public bodies such as NHS England, and executive agencies such as Public Health England. There are counterpart organisations within the constituent countries of the UK.
- 5.3 Government Digital Service ("GDS"): Part of the Cabinet Office, the GDS helps people interact with government and support government to operate more effectively and efficiently. Among the responsibilities of GDS is to build and support common platforms, services, components and tools and to help government choose the right technology, favouring shorter, more flexible relationships with a wider variety of suppliers.

- 5.4 Public Health England (“PHE”): An executive agency of the Department of Health and Social Care in the United Kingdom. PHE's mission is "to protect and improve the nation's health and to address inequalities".

6 Extremely Vulnerable Individuals

- 6.1 The Service requires the regular delivery of a Food Box to those persons clinically defined as Extremely Vulnerable Individuals and who have received a letter from NHS England identifying them as such.

- 6.2 All Contractor personnel involved in the Service, particularly delivery drivers, must be aware that the recipients of Food Boxes will most likely be of impaired health. Extremely Vulnerable Individuals falling into this group include but are not limited to:

- (a) solid organ transplant recipients;
- (b) people with specific cancers:
 - i. people with cancer who are undergoing active chemotherapy or radical radiotherapy for lung cancer;
 - ii. people with cancers of the blood or bone marrow such as leukaemia, lymphoma or myeloma who are at any stage of treatment;
 - iii. people having immunotherapy or other continuing antibody treatments for cancer;
 - iv. people having other targeted cancer treatments which can affect the immune system, such as protein kinase inhibitors or PARP inhibitors;
 - v. people who have had bone marrow or stem cell transplants in the last 6 months, or who are still taking immunosuppression drugs;
- (c) people with severe respiratory conditions including all cystic fibrosis, severe asthma and severe COPD;
- (d) people with rare diseases and inborn errors of metabolism that significantly increase the risk of infections (such as SCID, homozygous sickle cell);
- (e) people on immunosuppression therapies sufficient to significantly increase risk of infection; and
- (f) women who are pregnant with significant heart disease, congenital or acquired.

- 6.3 The Government guidance link below provides further detail:

<https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

7 The Basket of Goods

- 7.1 Each Food Box will comprise a box of household essentials – food and basic supplies – as agreed between the Parties. Subject to paragraph 7.2 below, the tables below identify the agreed contents of each Food Box (based on the requirement for 1 person for 1 week) and the agreed substitutes in the event that a particular item is unavailable:

- (a) prior to 24 April 2020 (or any earlier date agreed between the Parties):



gory

(b) following 24 April 2020 (or any earlier date agreed between the Parties):



██████████ and
██████████

- 7.2 The contents of the Food Box shall be reviewed jointly by the Parties during weekly contract management meetings, and the Parties shall mutually agree by no later than 24 April 2020 any changes to the table referred to in paragraph 7.1(b). The Parties shall take into account the Contractor's current stock level of items when proposing and agreeing any amendments to the contents of the Food Box.
- 7.3 Pursuant to paragraph 8 below, the Contractor shall ensure that the Food Box comprises of good quality products. In the event that the good quality product is not available, the Contractor shall source an equivalent product of similar quality but in the same category. In the event that the Contractor cannot source an equivalent product of similar quality then it shall (subject to review by the Authority during the weekly contract management meetings) source and replace that product with a category substitute (i.e. not in the same category but of good quality).

For example: The Contractor shall endeavour to put a tin of Heinz baked beans or equivalent brand in the Food Box. If Heinz baked beans are not available, the Contractor shall source 'own label' or equivalent brand baked beans. If 'own label' or equivalent brand baked beans are not available, the Contractor shall (subject to review by the Authority during the weekly contract management meetings) substitute baked beans with a tin of Heinz or equivalent brand butter beans.

8 Quality of the Basket of Goods

- 8.1 The Contractor must maintain the product specification equivalent to that offered by ██████████ in relation to the contents of the Food Box. The Authority accepts that there will be inevitable changes to the items in the Food Box, however these must remain of the same quality and any substitutions shall be in accordance with the requirements of paragraph 7 above.
- 8.2 In the event of any dispute as to the contents of the Food Box, the Authority will have the right to determine the contents and equivalent prices of the box in agreement with the Contractor.
- 8.3 All products supplied by the Contractor shall be of consistent quality and the Food Box must be nutritionally balanced.
- 8.4 The quality of the Food Box will be assessed by reference to its nutritional content, retail value, and feedback (as to quality and variation, not taste) from end user Extremely Vulnerable Individuals.
- 8.5 If the Authority identifies that a much inferior product is consistently stocked without prior permission, then the Authority will request the removal and replacement of the item from Food Boxes with immediate effect at no additional cost to the Authority. Substitutions that are not in accordance with the table in paragraph 7 above are not permitted and may not be included without prior permission from the Authority.
- 8.6 If the Contractor is unable to source any of the items set out in the table in paragraph 7 above, including any agreed substitutions, the Contractor must immediately identify this issue to the Authority and propose an alternative substitution or substitutions for the Authority's approval.

- 8.7 At the date of delivery, the perishable items in a Food Box must be useable for at least a week and the fresh items for 3 days.
- 8.8 If any product recall arises in respect of the contents of any Food Box, the Contractor shall:
- (a) immediately notify the Authority; and
 - (b) as soon as reasonably practicable, notify all Extremely Vulnerable Individuals who have received a delivery containing that item and require those individuals to destroy the relevant item.

9 Volume Commitment

- 9.1 Subject to paragraph 9.3, the Authority agrees to underwrite advanced stock cover on a 3 week rolling basis (the "**Volume Commitment**"). The projected quantity of stock will be calculated on the basis of the previous 3 weeks' demand for Food Boxes and the projected forecast demand for the forthcoming 3-week stock period as provided by the Authority, and agreed in accordance with paragraph 9.2. Such stock (and any other stock sourced for the purposes of this Contract) shall be used only for the provision of Services under this Contract and not for any other purpose by the Contractor, save with the Authority's prior written consent.
- 9.2 The extent of the Volume Commitment for the forthcoming period will be agreed each Wednesday by both Parties' contract management teams and confirmed in writing by the Authority immediately following the meeting.
- 9.2A The Contractor shall recycle any stock remaining following underutilisation against the Volume Commitment in the subsequent committed period, and the forecast demand referred to in paragraph 9.1 shall be adjusted to reflect the additional stock available for this period.
- 9.3 The Volume Commitment will remain in place for the Contract Period, excluding the final 4 weeks of the Contract Period.
- 9.3A The Parties shall develop an exit management plan to be agreed at the 5 week review to be held not later than 1 May 2020, to include provisions relating to (but not limited to) residual stock and bulk deliveries.
- 9.4 Four weeks prior to the end of the Contract Period, the Contractor shall provide the Authority with a full summary of deliveries made to Extremely Vulnerable Individuals, future deliveries for the next 4 weeks, and picked Food Boxes in stock and Food Box-related bulk stock, including goods in transit for that days' deliveries.
- 9.5 The Authority shall confirm any additional forecast growth for the 4 week period referred to in paragraph 9.4 on a weekly basis.
- 9.6 The Contractor shall use the final 4 weeks of the Contract Period to ensure that deliveries have been allocated between itself and the Alternative Contractor throughout the Contract Period on a 50/50 basis (including by agreeing any necessary post code moves to provide for this).
- 9.7 The Contractor shall use reasonable endeavours to ensure that any residual stock remaining following the expiry of the Contract Period are minimised.
- 9.8 The Authority commits to underwrite up to 10% of the volume forecast for residual stocks for the final 4 weeks of the Contract Period. The Contractor will deliver the residual stock to

locations defined by the Authority on an agreed allocation basis within 7 days of expiry of the Contract Period, and the Price payable for such stock shall be determined as follows:

- (a) in respect of the Contents Price and Picking Price, the Authority will be charged at a Food Box equivalent rate; and
- (b) in respect of the Delivery Price, the price payable shall be agreed between the Parties acting reasonably, taking into account the requirements of the Authority.

10 Data and Process Flow

- 10.1 The Department of Health and its ALB NHS England hold the central health database for England's Health Service. GP records held by the Department of Health (or the relevant ALB) have been used to determine the initial 1.5m people that are defined as being Extremely Vulnerable Individuals. Extremely Vulnerable Individuals in England have each been sent a letter by the NHS that should have been received by 29 March 2020. This letter states that they are clinically Extremely Vulnerable and should consider registering for support with their food on the government website <https://www.gov.uk/coronavirus-extremely-vulnerable>. The website then asks several questions to determine need and eligibility as an Extremely Vulnerable Individual, a request is also made to state whether or not support with food is required and whether it is agreed for the data to be shared to help facilitate delivery.
- 10.2 The response data from the website is then drawn down by GDS into a demand file which will be shared with the Alternative Contractor daily as a list of eligible delivery addresses and phone numbers for a single Food Box to be delivered during the following week.
- 10.3 The Contractor and Alternative Contractor will allocate loads and deliveries between themselves to fulfil deliveries on a geographical basis. This allocation will be notified to the Authority and KPIs will be measured against the agreed allocation between the Contractor and Alternative Contractor.
- 10.4 The Contractor shall use its best endeavours to verify and cleanse the data set provided and notify the Authority of any material variations required to the agreed allocation between itself and the Alternative Contractor (including as a result of duplications).
- 10.5 The Parties acknowledge that, as with any large data set, there will be a percentage of errors that require the Parties', and GDS, to use all reasonable endeavours to review and cleanse the data.
- 10.6 The Authority takes no liability for the quality of the data provided. However, both Parties acknowledge the need to work collaboratively toward reducing any errors in the address data as a missed delivery is a missed parcel of food to an Extremely Vulnerable Individual. For these purposes, it is expected that the Contractor will review the address data and determine and rectify as many errors as possible in accordance with paragraph 10.3 above, and that the Authority will support this process as appropriate through liaison with the Contractor, Alternative Contractor and GDS. Cleansed data files should be shared with GDS as required. The Contractor shall provide all cleansed delivery data files to GDS on request by GDS.
- 10.7 For information only, the data process for Scotland, Northern Ireland and Wales is expected to work as follows:
 - (a) Scotland: uses a combination of SMS and Local Authority contacts to establish which of the 120,000-150,000 extremely vulnerable people need food boxes. Letters to the largest cohort issued were issued week ending 29 March 2020, in response people have been registering on the SMS system. A text was then issued on 30 March 2020 to those registered and to all new registrants thereafter to invite them to flag if they

require delivery of a food box, the first customers commenced on 31 March 2020. A single dataset will be passed to the Contractor, and the Contractor and Alternative Contractor will allocate loads and deliveries between themselves to fulfil deliveries on a geographical basis. It is a requirement in Scotland that the Contractor uses smaller regional wholesalers as part of the supply chain to ensure coverage of the more remote and islands communities.

- (b) Northern Ireland: uses a combination of SMS and Local Authority contacts to establish which extremely vulnerable people need food boxes. Letters to the largest cohort issued were issued week ending 29 March 2020, in response people have been registering on the SMS system. A text was then issued on 30 March 2020 to those registered and to all new registrants thereafter to invite them to flag if they require delivery of a food box, the first customers commenced on 31 March 2020. A single dataset will be passed to the Contractor, and the Contractor and Alternative Contractor will allocate loads and deliveries between themselves to fulfil deliveries on a geographical basis. It is a requirement in Northern Ireland that the Contractor uses smaller regional wholesalers as part of the supply chain to ensure coverage of the more remote and islands communities.
- (c) Wales: uses a combination of SMS and Local Authority contacts to establish which of the 150,000-200,000 extremely vulnerable people need food boxes. Letters to the largest cohort issued were issued week ending 29 March 2020, in response people have been registering on the SMS system. A text was then issued on 30 March 2020 to those registered and to all new registrants thereafter to invite them to flag if they require delivery of a food box, the first customers commenced on 31 March 2020. A single dataset will be passed to the Contractor, and the Contractor and Alternative Contractor will allocate loads and deliveries between themselves to fulfil deliveries on a geographical basis. It is a requirement in Wales that the Contractor uses smaller regional wholesalers as part of the supply chain to ensure coverage of the more remote and islands communities.

11 Delivery

11.1 All drivers must be familiar with paragraphs 6 and 12 of this Schedule 1 and must conduct deliveries in a manner that ensures their safety and that of the service user, taking containment measures seriously.

11.2 The driver reporting process is as follows:

- (a) driver leaves depot with manifest of deliveries to be made;
- (b) driver arrives at address and completes 'Barrier Delivery Private Residence' process;
- (c) after a delivery attempt is made, the driver shall immediately record on the manifest against the address whether the delivery was successful according to the six code shown in Table 2.0 below:

Code	Status	Definition
1	Delivered to individual.	Driver has seen the recipient receive the box.
2	No answer and left on doorstep	Driver attempted to contact recipient at the designated address but had no reply or sighting of recipient.
3	Rejected as no longer required	Driver attempts to deliver and has been advised by the recipient that the box is no longer required.

4	Unopened box still there from last week	If the box is there from last week, 1) Leave that Food Box in place on the doorstep. 2) Do not Leave a new Food Box. 3) Flag for urgent attention. Record as Data code 4 as a feedback into GDS.
5	Unable to access issue	Driver attempts to deliver and is unable access because of; wrong address, restricted property access. Contractor will make best endeavours to contact the recipient to complete delivery.
6	Unable to deliver. Delivery Box Failure. Vehicle failure, RTA, Drivers Hours, staff problem etc.	Unable to deliver because of operational circumstances to include but not limited to vehicle breakdown, driver's hours, staff issues, Road Traffic Incident, other emergency services incident.

Table 2.0 (Delivery Status)

- (d) upon return to the depot at the driver reception/debrief a reconciliation is undertaken for any over-delivery/under-delivery on boxes vs. manifest;
- (e) driver returns manifest to depot;
- (f) depot administration update excel list of residents / address with actual deliveries and reference codes;
- (g) depot feeds in centrally the Excel document each night;
- (h) all deliveries centrally collated and communicated back to the Authority (for the avoidance of doubt, such data shall be delivery information only and not the details of Extremely Vulnerable Individuals, including addresses);
- (i) if the delivery is categorised as a code 6 then delivery will be made within the 7 day KPI window. The first delivery is not chargeable to the Authority;
- (j) if the delivery is categorised as a code 3, 4, 5 then the delivery shall be classed as a Frustrated Delivery and the Contractor will report this to GDS for them to update the address data;
- (k) if the delivery is categorised as a Frustrated Delivery then the following shall apply;
 - i. The data shall be fed back to GDS by the Contractor.
 - ii. For Category 3: redelivery shall not be attempted by the Contractor. Should the recipient choose to re-access the Service, this shall be treated as a new demand.
 - iii. For Category 4: the Contractor shall leave the existing Food Box in place on the doorstep and shall not leave a new Food Box on the doorstep. Redelivery shall not be attempted by the Contractor. Should the recipient choose to re-access the Service, this shall be treated as a new demand.
 - iv. For Category 5: the Contractor shall use best endeavours to contact the recipient to complete delivery and shall record the reason for the Frustrated Delivery. Redelivery shall not be attempted by the Contractor. Should the recipient choose to re-access the Service, this shall be a new user demand.

11.3 Where possible and in compliance with social distancing protocols, drivers should deliver packages directly to individual recipients and confirm that they have received the relevant package.

12 Hygiene Picking, Warehouse and Delivery

COVID-19: cleaning in non-healthcare settings

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>

- 12.1 All storage, handling, and delivery will be undertaken from premises and in vehicles that comply with the requirements for food distribution as defined in UK law.
- 12.2 All packaging boxes used for customer delivery must be fit for purpose, and adequate to maintain the quality and integrity of the contents for one outbound journey from the depot to the premises of the Extremely Vulnerable Individual.

13 Sustainable Development and SME Agenda

- 13.1 The Contractor shall seek to reduce its impact upon the environment where practicable. This may include but is not limited to the efficient operation and tasking of vehicles, the control of and reduction of waste materials.
- 13.2 In the delivery of this Contract the Contractor shall use its reasonable endeavours to support regional suppliers, promote locally produced and branded items. This may be a contractual requirement in Scotland, Wales and/or Northern Ireland.
- 13.3 Appropriate sub-contracting by the Contractor to smaller regional wholesalers is strongly supported by the Authority. This may be a contractual requirement in Scotland, Wales and/or Northern Ireland.

14 Key Performance Indicators

- 14.1 The KPIs set out in the table below will apply to the Service and will be measured from the date of signature of this Contract.
- 14.2 The Contractor is required to report on its performance against the KPIs below in accordance with the weekly reporting schedule detailed in paragraph 15 below and the governance process described in paragraph 16.
- 14.3 The Parties may agree to adjust the KPIS as appropriate following the initial 5 week Service delivery period.
- 14.4 MHCLG and end user surveys will be conducted on a weekly basis and the Authority will feed back the results of such surveys to the Contractor to be taken into account when considering performance against the KPIs.
- 14.5 In the event that the Contractor achieves a KPI rating of 1 for any of the KPIs, or 2 for KPIs 1, 2 or 3, the Contractor shall be required to immediately produce a remediation plan for the Authority's approval and implement the terms of any such agreed remediation plan. In respect of a remediation plan relating to KPI 1, such remediation plan shall include a binding commitment to achieve delivery of any Undelivered Food Boxes within 3 days, such that no Extremely Vulnerable Individual is without a Food Box for a period beyond 10 days of the Initial Demand. Save where alternative timeframes for resolution have been agreed within the relevant remediation plan, the following circumstances shall constitute a Material Breach for the purposes of the Contract and the provisions of clause F3.1 shall apply (including by giving rise to a right to terminate the Contract in accordance with clause H2):
 - (a) a KPI rating of 1 is maintained for a period of 3 weeks;
 - (b) a KPI rating of 2 for KPIs 1, 2 or 3 is maintained for a period of 5 weeks, save where the relevant KPI rating was previously 1, in which case this period shall reduce to 3 weeks.

14.6 For the avoidance of doubt, paragraph 14.5 of this Schedule 1 shall not apply where the Contractor's performance is so inadequate as to require immediate termination of the Service on the basis that no remediation plan would be appropriate to resolve the issue, in which case such circumstances shall immediately constitute a Material Breach.

14.7 KPIs 4 and 5 will not form part of the reporting process until the reporting against such KPIs is agreed at the 5 week review to take place on or prior to 1 May 2020.

KPI	Measure	KPI description	KPI Rating (1- 3 scale)			Report
			1	2	3	
KPI 1 – Delivery of Food Box	98.5% of all post cleansed addresses provided by GDS successfully delivered Code 1,2,3,4, 5. On time in full delivery with zero defect within a rolling 7 day period from the Initial Demand.	The delivery is on time, in full, zero defects (OTIFZD)	Below expectations (97.0% or less of the time)	Requires remediation (97.1% to 98.4% of the time)	Acceptable Performance (98.5% - 100% of the time)	As stated in paragraphs 15.3 and 15.4
KPI 2 – Food Box Product Quality	Basket of goods direct nutrition comparison to applicable list.	Percentage availability of the basket of goods including substitutions Information.	Poor Correlation of Delivered Box compared to applicable list. More than 3 non-agreed substitutes	Requires improvement: Correlation of Delivered Box compared to applicable list. More than 2 non-agreed substitutes	Good Correlation of Delivered Box compared to Basket list (03/04/20) 2 or less non-agreed substitutes	As stated in paragraph 15.5.
KPI 3 - Administration	Supply of reporting and weekly plan within prescribed timeframes.	Administration timeliness.	Not provided on nominated day.	Late same day.	On time.	Timeliness of reports stated in paragraphs 15.1, 15.3, 15.4 and 15.5.
KPI 4 - Food Box Satisfaction	Mutually Agreed Satisfaction Survey of Cross Section of End Users	Survey held to determine satisfaction of Food Box Service. Relief for 5 weeks until 5 week review	Less than 75% positive responses	75% positive	95% positive responses	Being developed and to be agreed by not later than 1May 2020.
KPI 5 - Complaints per 1000 deliveries.	Formal Complaints Received.	Recurring Formal complaints made by Extremely	50 per 1000	25 per 1000	10 per 1000	Being developed and to be agreed by not later than 1 May 2020.

		Vulnerable Individuals to the Authority about any aspect of Service. Relief for 5 weeks until 5 week review				
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- 14.8 The purpose of KPI 1 is to determine the effectiveness of the Service. The delivery of a complete undamaged Food Box to the stated delivery address within a period of 7 days from the date of the Contractor receiving the data relating to that delivery address. The date of receipt of such data for the purposes of paragraph 14.5 and this 14.8 (the “**Initial Demand**”) shall be the date of arrival of the data if received before 1pm on that date, or the next day if received after 1pm. This will be reviewed by the Parties on a weekly basis. The measurement of this KPI will be conducted on a rolling 7 day basis to include the removal of data errors and duplicates by the Contractor as the baseline demand for deliveries. Irrespective of any other provisions within this Contract (including the KPIs), the Contractor commits to providing all Food Boxes due to a single Extremely Vulnerable Individual within a maximum of a 10 day period from the Initial Demand.
- 14.9 The purpose of KPI 2 is to determine the quality of the Food Box contents. Contractor to provide a report per week of the availability for product going into the Food Boxes against the applicable basket stated in paragraph 7. This will be reviewed by the Parties on a weekly basis.
- 14.10 The purpose of KPI 3 is to ensure that the Authority is furnished with all reporting and forecasting requirements detailed in this Specification, on the required date.
- 14.11 The purpose of KPI 4 is to ensure that the key stakeholders can determine satisfaction of the recipients the Food Box content. The survey (“**Satisfaction Survey**”) will focus on feedback on 3 headline areas only:
- (a) the palatable nutrition of the Food Box, i.e. relating to the quality and balance of the Basket of Goods.
 - (b) accessibility of the Food Box once delivered – relative to their dwelling access; and
 - (c) longevity of fresh food and perishable items – i.e. did it last 3 days.
- The Satisfaction Survey will be devised by the Authority and will be shared with the Contractor before it is disseminated to the recipients of the Food Boxes. This KPI is for the purposes of collating feedback and working towards an improved Service. This will be reviewed by the Parties on a fortnightly basis.
- 14.12 The purpose of KPI 5 it to identify recurring themes from material complaints made directly to the Authority on the scheme either from direct users or collated from the Key Stakeholders. The complaints to be considered will focus on 3 headline areas only:
- (a) the palatable nutrition of the Food Box, i.e. relating to the quality and balance of the content of the contents of the Food Box;
 - (b) accessibility of the Food Box once delivered – relative to their dwelling access; and
 - (c) delivery. This KPI is for the purpose of feedback to both Parties. Measured not less than fortnightly.
- 14.13 KPIs 4 and 5 will be developed further and agreed at the 5 week review not later than 1 May 2020.

15 Delivery Reporting and Forecasting

15.1 The Contractor shall provide to the Authority, on a daily basis:

- (a) by 5pm, the previous day's delivery information including the successful deliveries completed by both the Contractor and Alternative Contractor (on both a consolidated and individual basis, and including a breakdown by delivery code but not by postcode district); and
- (b) after 9am, from the previous day's newly received data provide the planned split of the Anticipated Volume for the week between the Contractor and Alternative Contractor.

15.2 The Contractor shall use best endeavours to work collaboratively with the Alternative Contractor and the Authority to forecast the future 2 weeks' demand and identify any foreseeable spikes or troughs.

15.3 The Contractor shall provide on a weekly basis by 5pm each Monday (excluding bank holidays, in which case such information shall be delivered on the next Working Day) a summary of KPI information showing day by day number of successful deliveries within that KPI. A data summary will be provided 14 days after the first data received date for each weekly batch. For example, for week commencing Monday 23 March a summary report will be provided on Monday 6 April. Note: Day 8, 9 and 10 information will not be available for the previous Sunday's data. Delivery success is based on codes 1, 2, 3, 4 & 5. Code 6 is a fail. For the avoidance of doubt if a delivery attempt is made on day 2 and registered as Code 6 (fail) but then subsequently redelivered on Day 5 as Code 1, 2, 3, 4 or 5 it will be registered on Day 5 as successful.

Example report:

Date Data Received from Defra	Total New Batch Quantity	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Out-standing	Within 7 Days	Over 7 Days	Delivery KPI
23/03/2020	10,000	2,000	2,000	2,000	2,000	1,000	500	400	50	25	15	10	9,900	100	99.0%
24/03/2020	12,000	3,000	3,000	2,000	2,000	1,000	600	250	80	30	20	20	11,850	150	98.7%
25/03/2020															
26/03/2020															
27/03/2020															
28/03/2020															
29/03/2020															
Total	22,000	5,000	5,000	4,000	4,000	2,000	1,100	650	130	55	35	30	21,750	250	98.9%

15.4 The Contractor shall provide on a weekly basis by 5pm each Monday (excluding bank holidays, in which case such information shall be delivered on the next Working Day) summary information for the week before last delivery code by post code district. If a delivery is made as code 6 in the week and subsequently redelivered within the 7 day period as code 1, 2, 3, 4, 5 then that code shall be the final code.

Example report:

Week Commencing	23/03/20	20
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Post Code District	Code 1	Code 2	Code 3	Code 4	Code 5	Code 6	Total Code 1-5	Total Code 6	Outstanding	Percentage 1-5
CV4	736	116	56		63	114	971	14		98.6%
RG12										
LA25										

15.5 For KPI 2, the Contractor shall provide a report per week of the availability for product going into the Food Boxes against the applicable basket stated in paragraph 7.

16 Governance

16.1 The Parties (together with the Alternative Contractor) are required to attend the following meetings/calls during the Contract Period:

- (a) daily operational roll out review call to resolve data / delivery issues;
- (b) a steering conference call twice a week to review current volume, forecast, performance against KPIs, Country Specifics, Issue Resolution;
- (c) a weekly review meeting to review the effectiveness of the Service;
- (d) a fortnightly review meeting to formally review the Contractor's performance against the KPIs;
- (e) a 4 weekly service review to escalate or finalise persistent problems risks or highlighted KPI failures;
- (f) a final review meeting following expiry or termination of the Contract.

17 Key Authority Contacts

Name	Organisation	Job Title	C19 Food Box Role	Working Group	Email Phone numbers	
[REDACTED]	DEFRA	EU Exit Negotiator	Project Lead	Core	[REDACTED].gov.uk	[REDACTED]
[REDACTED]	DEFRA	Acting Deputy Director Food Security,	Project Lead	Core	[REDACTED]	
[REDACTED]	DEFRA	Procurement Lead	Procurement Lead	Core	[REDACTED]	[REDACTED]

SCHEDULE 2 – PRICING

1. The Price

1.1 The Price payable by the Authority for each Food Box delivered in accordance with this Contract following the date of signature of this Contract shall be made up of the following individual prices and shall depend on the delivery status of each Food Box in accordance with paragraph 4 below:

- (a) a price for the contents of each Food Box of £ [REDACTED] (the “**Contents Price**”);
- (b) a picking cost per Food Box of [REDACTED] (the “**Picking Price**”); and
- (c) a delivery cost per Food Box as outlined in the following table (the “**Delivery Price**”):

Total volume (reflecting the combined volume allocated to both the Contractor and Alternative Contractor)	Delivery Price
Band A ≤ 150,000 total Food Boxes per week	[REDACTED]
Band B > 150,001 total Food Boxes per week	[REDACTED]

For the avoidance of doubt, should the total volume exceed 150,001 Food Boxes per week, the Delivery Price of £ [REDACTED] is applicable to the total volume and not only the volume above 150,001.

2. Benchmarking

- 2.1 The Contents Price of each Food Box shall be subject to review by the Parties on a weekly basis throughout the Contract Period.
- 2.2 For the purposes of the review, the Contractor shall provide the Authority with a price comparison setting out the contents of the Food Box against [REDACTED]’ online pricing (excluding promotions) on the day of the review for the same or equivalent items taking into account a 6% decrease in the price of the total basket.
- 2.3 The Contractor shall carry out the benchmarking exercise described in this paragraph 2 on a weekly basis and report the relevant costs to the Authority during the contract management meetings described in the Specification. The Authority shall have the right to audit the results of the benchmarking process to ensure that such exercise has been carried out in accordance with this Schedule 2.
- 2.4 The Parties shall work together to agree a suitable benchmark(s) for the Delivery Price by 1 May 2020. The Contractor shall provide reasonable assistance (including data as appropriate) to support the Authority in monitoring the Delivery Price against the agreed benchmark on a monthly basis during the Contract Period.

2.5 There shall be no change to the Price as a result of the benchmarking process save as agreed between the Parties.

3. Logistics Assumptions

3.1 The following assumptions shall apply:

- (a) average 40 deliveries per driver per day with delivery status codes 1 to 5;
- (b) deliveries 7 days per week;
- (c) deliveries can be accepted between 06:00-22:00;
- (d) balanced volume across 7 days per week;
- (e) deliveries using the Contractor's existing vehicle fleet, with single manned vehicles; and
- (f) deliveries will be made in mainland England (including the Isle of Wight) only.

3.2 For the avoidance of doubt, save as otherwise agreed between the Parties, neither Party shall be entitled to a change to the Price as a result of any change to the assumptions set out in paragraph 3.1.

4. Delivery Price

4.1 The delivery codes that will be attributed to deliveries are set out in paragraph 11 of the Specification. The Price payable for each Food Box shall be determined in accordance with the "Price Payable" column of the following table:

Delivery Code	Price Payable
1	Contents Price, Picking Price and Delivery Price
2	Contents Price, Picking Price and Delivery Price
3	Delivery Price
4	Delivery Price
5	Delivery Price
6	No charge to the Authority

4.2 Subject to paragraph 4.3, where more than one Food Box is delivered to the same postal address, based on the same address data, then the Authority will pay only one Delivery Price, but with multiple Contents Price and Picking Price based on the number of Extremely Vulnerable Individuals at the single address.

- 4.3 In respect of any Bulk Delivery, the Delivery Price will be £■■■■ (exclusive of VAT). Where more than one Bulk Delivery is made at the same time and to the same location, the Authority will pay to the Contractor the Delivery Price for a single Bulk Delivery multiplied by the number of Bulk Deliveries that have been delivered. For example, the transport charge for a Bulk Delivery of 90 Food Boxes will be charged at ■■■■■ (£■■■ for the first 10-50 boxes, plus ■■■■ for the remainder of boxes).

SCHEDULE 3 – CHANGE CONTROL

Contract Change Notice (“CCN”)

CCN:	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the Provision of Food Boxes to Vulnerable People in Self-Isolation Following Covid-19 dated 23/04/2020 (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 CCN:

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

2. Save as amended in the CCN all other terms of the Original Contract remain effective.
3. The CCN takes effect from the date on which both Parties confirm acceptance of its terms via Bravo.