[redacted]

AGREEMENT FOR THE SUPPLY OF SERVICES

AWARD LETTER

For the attention of:	[redacted]
Supplier name:	The Economist Group
Registered company number:	02642807
Supplier address:	The Adelphi, 1-11 John Adam Street, London, SC2N 6HT
By email-to-email address:	[redacted]
Your reference:	C102765
Our reference:	W3509
Award of agreement for the supply of:	Content Evidence Checks
Customer:	Health and Social Care Information Centre (known as NHS Digital)

This Award Letter and its Annex(es) set out the terms of the Agreement between the Health and Social Care Information Centre (known as NHS Digital) as the 'Customer' and the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions set out in Annex 1 to this Award Letter (the **"Conditions"**). In the event of any conflict between this Award Letter, the Conditions and Annexes 2 and 3, the following order of precedence shall apply:

a) Award Letter;
b) Conditions;
c) Annex 2; and
d) Annex 3.

Please do not attempt to attach any Supplier terms and conditions or amend this Agreement as these will not be accepted by the Customer and may delay processing of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

1) The Services shall be performed at:

Address:	As agreed with NHS Digital
Contact telephone number:	[redacted]

2) The Specification and Charges for the Services to be Delivered shall be as set out in Annexes 2 and 3 respectively.

3) The Term shall be the period from the start date to the Expiry Date as follows, and the following Extension Period(s) shall be applicable:

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Start date	12th September 2022
Expiry Date	11th September 2023
Extension Period(s)	3 x 12 months

4) The details and addresses for communications and service of notices on the Parties are:

Customer	
[redacted]	
Supplier	
[redacted]	

5) The following persons are Key Personnel for the purposes of the Agreement:

[redacted]

6) Processing of Personal Data by the Supplier for and on behalf of the Customer is occurring pursuant to this Agreement:

No

In the event that the answer is yes, or if this becomes the case during the term of this Agreement, the Parties shall complete the table below and clauses 12.2 to 12.10 shall apply in respect of such Processing.

The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under the Agreement. The Supplier shall comply with any further written instructions with respect to Processing given by the Customer and any such further instructions shall be incorporated into this table:

Description	**Details**

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Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the Controller and the Supplier is the Processor in accordance with clause 12.
Subject matter of the Processing	Not applicable
Duration of the Processing	Not applicable
Nature and purposes of Processing	Not applicable
Type of Personal Data being Processed	Not applicable
Categories of Data Subjects	Not applicable
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	Not applicable
Data Protection Officer of Supplier	Not applicable

7) The Liability Cap shall be a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier The Economist Group Ltd

8) For the purposes of the Agreement the following Customer policies apply:

Staff Vetting Procedures
Data security requirements
Equality and diversity policy
Environmental policy
CSR Policies

9) The Supplier shall be required to ensure that any person potentially to be employed in the supply of the Services has undertaken a Disclosure and Barring Service check:

No

If 'Yes' the Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of

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a type otherwise advised by the Customer (each such conviction a **"Relevant Conviction"**), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.

10) The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the purchase order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Customer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.

Any queries regarding outstanding payments should be directed to NHS Digital's Accounts Payable section by email at financialaccounts@nhs.net.

Invoices should clearly quote the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

Please execute and return to NHS Digital a copy of this Agreement within 7 days of receipt. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this Agreement.

Please direct all queries to the Customer contact. We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services.

The individuals set out below shall execute this Agreement, on behalf of the Customer and the Supplier, either using a manuscript signature or an electronic signature. A manuscript signature shall be placed in the execution block below, an electronic signature shall be evidenced in an execution block to be attached as the final page of this Agreement:

	Supplier	**Customer**
[redacted]		

Annex 1: Terms and Conditions of Agreement for Services

1. Interpretation

1.1. In these terms and conditions:

Agreement	means the contract between (i) the Customer and (ii) the Supplier comprising the Award Letter, these Conditions and Annexes 2 and 3;
Award Letter	means the letter from the Customer to the Supplier printed above this Annex 1 (Terms and Conditions of Agreement for Services);
Background IP	means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency; and to the extent not included in the above, the Department for Health and Social Care and NHS England;
Charges	means the charges for the Services as specified in the Award Letter and set out in Annex 3;
Conditions	means as defined in the Award Letter;
Contractor	means any individual delivering the Services (or any part of them)
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Confidential Information	means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party ("**Discloser**") to the other Party or to any person on behalf of that other Party ("**Recipient**") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the supply of the Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential, or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include information that: (i) was known by the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii)

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	has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser;
Control	means the possession by a person, directly or indirectly, of 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 or Data Controller	has the meaning given to it in the Data Protection Laws;
CSR Policies	means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;
CSR Laws	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
Customer	means the Health and Social Care Information Centre (known as NHS Digital);
Customer Data	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer Confidential Information, and which: a) are supplied to the Supplier by or on behalf of the Customer; or b) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or c) any Personal Data for which the Customer is the Controller;
Data Protection Laws	means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including Regulation (EU)_2016/679 as transposed into the United Kingdom's national law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;, 'the UK General Data Protection Regulation' ("UK GDPR") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;
Data Protection Impact Assessment	an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data;

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Data Subject	has the meaning given to it in the Data Protection Laws;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services;
Dispute Notice	means as defined in clause 21.1;
DSP Toolkit	means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the UK GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/, as may be amended or replaced by the Customer or the Department of Health and Social Care from time to time;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391);
Expiry Date	means the date for expiry of the Agreement as set out in the Award Letter;
Extension Period	means the period, if any, as specified in the Award Letter, by which the Term may be extended by the Customer; (not to exceed [36 months] in total);
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding, for the avoidance of doubt, (i) an epidemic or pandemic, ii) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; and iii) the withdrawal of the UK from the European Union and any related circumstances, events, changes or requirements;
Foreground IP	means any Intellectual Property Rights in the Deliverables;
Good Industry Practice	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
Information	has the meaning given under section 84 of the FOIA;

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Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
Intermediary	means any "intermediary" (as defined in section 61M ITEPA) in respect of which any of Conditions A – C within section 61N ITEPA are met
ITEPA	Income Tax (Earnings and Pensions) Act 2003
Key Personnel	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye law, regulation, order, mandatory guidance or code of practice,judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;
Liability Cap	means the aggregate liability of the Supplier which shall not exceed the greater of: i) a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier; or ii) the value specified in the Award Letter;
NIS Regulations	means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;
Off-Payroll Working Rules	means the provisions of Chapter 10 of Part 2 ITEPA relating to the engagement of workers through intermediaries and the provisions of Social Security Contributions (Intermediaries) Regulations 2000/727 (or, in each case, any other provisions under any law having like effect)
Party	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
Personal Data	has the meaning given to it in the Data Protection Laws, and applies to personal data which is Processed by the Supplier or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Agreement;
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
Process	has the meaning given to it in the Data Protection Laws, and "Processed" and "Processing" shall be construed accordingly;
Processor or Data Processor	has the meaning given to it in the Data Protection Laws;

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Purchase Order Number	means the Customer's unique number relating to the supply of the Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
Restricted Country	means any country which is not subject of an adequacy decision, as set out in Part 3, Schedule 21 of the DPA 2018;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;
Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter and Annex 2;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);
Standards	means any standards reasonably applicable given the Supplier's expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
Standard Contractual Clauses	means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the Information Commissioner's Office;
Status Determination	means a status determination pursuant to, and for the purposes of, the Off-Payroll Working Rules
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

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Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Sub-Processor	has the meaning given to it in clause 12.4.7;
Supplier	means the person named as Supplier in the Award Letter;
Tax	means income tax, employee national insurance contributions and employer national insurance contributions (in each case whether or not required to be accounted for under the PAYE rules of the United Kingdom) and any equivalent tax, contribution or similar obligations elsewhere, together, in each case, with all related penalties and interest
Term	means as defined in clause 4.1;
Transparency Information	means as defined in clause 13.1;
Transparency Report	means as defined in clause 13.2;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2. In this Agreement, unless the context otherwise requires:

1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;

1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;

1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5. the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.

2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Services

3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.

3.2. In supplying the Services, the Supplier shall:

3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;

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3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;

3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;

3.2.5. comply with all applicable Standards, Laws and guidance;

3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and

3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.

3.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:

4.1.1. the Expiry Date; or

4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2;

subject to any early termination in accordance with this Agreement (the "**Term**").

4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

5.1. The Charges for the Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

5.3. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.

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5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and Equipment

6.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.

6.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

6.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

6.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.

6.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.

6.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.

6.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.

6.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

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7. Staff and Key Personnel

7.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.

7.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

7.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

7.3.1. refuse admission to the relevant person(s) to the Customer's premises;

7.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or

7.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

7.4. The Supplier shall:

7.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;

7.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

7.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.5. The Supplier shall agree on a case by case basis which Supplier Staff roles require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.

8. Assignment and sub-contracting

8.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.

8.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:

8.2.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Sub-contract;

8.2.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;

8.2.3. contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);

8.2.4. contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and

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8.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.

8.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.

8.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.

8.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9. Intellectual Property Rights

9.1. All Foreground IP shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.

9.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use:

9.2.1. all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP; and

9.2.2. all other relevant Intellectual Property Rights owned by the Supplier and/or the use of which the Supplier is able to license;

to the extent necessary to fulfil the Supplier's obligations under this Agreement and/or which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.

9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the Foreground IP in, and to register it in, the name of the Customer and/or to give full effect to the licences granted under this clause 9.

9.4. The Supplier:

9.4.1. warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

9.4.2. shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables.

9.5. All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.

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9.6. The Customer hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Customer and/or the use of which the Customer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.

9.7. The Supplier shall, unless otherwise stated in Annex 2:

9.7.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Customer;

9.7.2. procure that the third party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Customer; and

9.7.3. pay any applicable fees for any such licence.

10. Governance and Records

10.1. The Supplier shall:

10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.

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

10.3. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

11. Confidentiality

11.1. Subject to clause 11.2, each Party shall:

11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;

11.2.2. to its auditors or for the purposes of regulatory requirements;

11.2.3. on a confidential basis, to its professional advisers;

11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

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11.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6. where the receiving Party is the Customer:

a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

d) in accordance with clause 13,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.

11.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Protection of Personal Data and Security of Data

12.1. When handling Customer Data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

12.2. Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Customer as the Controller. The only Processing that the Supplier is authorised to do is listed in the Award Letter and may not be determined by the Supplier.

12.3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:

12.3.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;

12.3.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

12.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

12.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4. The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:

12.4.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Customer to the Supplier in writing from time to time) and set out in the table in section 6 of the Award Letter, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before Processing the Personal Data unless prohibited by Law;

12.4.2. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Laws;

12.4.3. ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the UK GDPR) which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful

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Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:

a) nature of the data to be protected;
b) harm that might result from a Personal Data Breach;
c) state of technological development; and
d) cost of implementing any measures;

12.4.4. notify the Customer immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Customer with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
describe the likely consequences of the Personal Data Breach; and
describe the measures taken or proposed to be taken to address the Personal Data Breach;

12.4.5. co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

12.4.6. not disclose the Personal Data to any Supplier Staff unless necessary for the provision of the Services;

12.4.7. other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Customer. In all cases where a Sub-Processor is appointed:

1) the contract between the Supplier and the Sub-Processor shall include terms which are substantially the same as those set out in this clause 12;
2) the Supplier shall provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require;
3) the Supplier shall remain fully liable to the Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
4) the use of the Sub-Processor shall be otherwise in accordance with clause 12.5;

12.4.8. take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Staff:

a) are aware of and comply with the Supplier's obligations under this clause 12 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
d) have undergone adequate training in the use, care, protection and handling of Personal Data;

12.4.9. notify the Customer immediately if it receives:

a) from a Data Subject (or third party on their behalf):
b) a Data Subject Access Request (or purported Data Subject Access Request);

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c) a request to rectify any inaccurate Personal Data;
d) a request to have any Personal Data erased or blocked;
e) a request to restrict the Processing of any Personal Data;
f) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or
g) an objection to any Processing of Personal Data;
h) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
i) 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
j) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(each a "**Relevant Communication**").

12.4.10. taking into account the nature of the Processing, provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer, and in any case within sufficient time for the Customer to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Customer directly) including by implementing such technical and organisational measures as may be reasonably required by the Customer and by promptly providing:

the Customer with full details and copies of the Relevant Communication (where received by the Supplier);
the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office;

12.4.11. allow for audits (including inspections) of its data Processing activity by the Customer or the Customer's mandated Auditor, and if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 12 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

12.4.12. cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Customer's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and

12.4.13. designate a data protection officer if required by the Data Protection Laws.

12.5. The Supplier shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Customer (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).

12.6. In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 12.5, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this clause 12, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;

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12.7. Subject to the Customer providing the Supplier with all information reasonably required by the Supplier to comply with this clause 12.6, the Supplier shall create and maintain a register setting out:

12.7.1. the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and

12.7.2. a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause 12.4.3.

12.8. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

12.9. Both the Customer and the Supplier shall comply with their respective obligations under the UK GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR.

12.10. Notwithstanding clause 22.3 the Customer may, at anytime on not less than 30 Working Days' notice, revise this clause 12 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

12.11. Both the Customer and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Customer may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.

12.12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

12.13. If following the date of this Agreement:

12.13.1. any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the UK GDPR or from the NIS Regulations are published; or

12.13.2. the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.

12.14. The Supplier shall at all times during and after the expiry of the Agreement, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 12.

13. Transparency and Freedom of Information

13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the **"Transparency Information"**) is not Confidential Information.

13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) (**"Transparency Report"**). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

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13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.

13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

14. Liability

14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2. Subject always to clauses 14.4 and 14.5:

14.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and

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14.2.2. except in the case of claims arising under clauses 9.4, 12.14 and 19.3, in no event shall either Party be liable to the other Party for any:

a) loss of profits;
b) loss of business;
c) loss of revenue;
d) loss of or damage to goodwill; and/or
e) any indirect, special or consequential loss or damage.

14.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier.

14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.4.1. death or personal injury caused by its negligence or that of its Staff;

14.4.2. fraud or fraudulent misrepresentation by it or that of its Staff; or

14.4.3. any other matter which, by law, may not be excluded or limited.

14.5. The Supplier's liability under the indemnities in clauses 9.3, 12.14 and 19.3 shall be unlimited.

14.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

15. Insurance

15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

16. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

17. Termination

17.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

17.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

17.2.1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

17.2.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

17.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

17.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;

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17.2.5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or

17.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.

17.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.2.4 or any potential such change of Control.

17.4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

17.5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6, 6.2, 6.7, 6.8, 0, 9, 10.2, 11, 12, 13, 17.6, 18.4.3, 19.3, 20 and 22.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

17.6. Upon termination or expiry of the Agreement, the Supplier shall:

17.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and

17.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

18. Compliance

18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies specified in the Award Letter.

18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

18.3. The Supplier shall:

18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and

18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

18.4. The Supplier shall:

18.4.1. comply, and procure that all Staff comply with all CSR Laws;

18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;

18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and

18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.

18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.

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18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

19. Prevention of Fraud and Corruption

19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:

19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20. IR35 – Not required.

21. 1.2 NHS Digital and the Supplier agree and acknowledge that this Agreement represents a contract for a fully contracted out service and, as a result, the Off-Payroll Working Rules shall not apply to NHS Digital in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.

22. 1.3 Notwithstanding clause 1.2, the Supplier] warrants and undertakes to NHS Digital that (i) each Contractor will be directly engaged exclusively as an employee for the purposes of and when delivering such Services (with all required Tax being withheld, deducted and/or accounted for in respect of any payments or other benefits provided to that Contractor) and (ii) that such engagement is not nor will be with any Intermediary of that Contractor.

23. 1.4 Promptly upon request from NHS Digital, the Supplier shall provide (or procure provision) to NHS Digital of all such evidence, information and assistance as NHS Digital reasonably requires in order to confirm that the warranties and undertakings given by the Supplier in clause 1.3 are, and remain, true, accurate and correct in all respects.

24. 1.5 NHS Digital shall be entitled to make any deductions in respect of Tax, from any payments to the Supplier, which it reasonably considers are required to be made as a result of, or connection with, the application of the Off-Payroll Working Rules.

25. 1.6 The Supplier shall indemnify NHS Digital, on demand and on an after-Tax basis, against:

26. 1.6.1 any and all proceedings, claims or demands by any third party (including, but without limitation, HM Revenue & Customs and any successor, equivalent or related body);

27. 1.6.2 any and all Tax and any other liabilities, losses, deductions, contributions or assessments; and

28. 1.6.3 any and all reasonable costs or expenses and any penalties, fines or interest incurred or payable,

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29. in each case, which arise as a result of, in consequence of, or otherwise in connection with, the [Supplier], at any time, being in breach of any of the warranties or undertakings given in clauses 1.3 or 1.9.

30. 1.7 NHS Digital may at its option satisfy the indemnity given under clause 1.6 (in whole or in part) by way of deduction from payments due to the Supplier.

31. 1.9 The Supplier warrants to NHS Digital that it is not, nor will it prior to the cessation of this contract become, a "managed service company", within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

32. Dispute Resolution

32.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing (**"Dispute Notice"**) setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

32.2. If the dispute cannot be resolved by the Parties within one month of the date of the Dispute Notice (being the date it was received) either Party may exercise any remedy it has under applicable law. For the avoidance of doubt, neither Party shall be prevented by this Dispute Resolution process from commencing court proceedings more quickly if it is necessary to comply with a limitation period or if it is necessary to seek an urgent remedy.

32.3. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to any dispute resolution process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

33. General

33.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

33.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

33.3. Subject to clause 12.10 the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

33.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

33.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

33.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

33.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

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33.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

34. Notices

34.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 23.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

34.2. Notices under clauses 16 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 23.1.

34.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

35. Security of Supplier Staff

35.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (https://www.gov.uk/government/publications/government-baseline-personnel-security-standard), as may be amended or replaced by the Government from time to time.

35.2. The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.

35.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing.All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

36. Publicity and Branding

36.1. The Supplier shall not:

36.1.1. make any press announcements or publicise this Agreement or its contents in any way; or

36.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Customer.

36.2. Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

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37. Governing Law and Jurisdiction

37.1. The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

38. Execution and Counterparts

38.1. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.

38.2. Execution of this Agreement may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature. In such situation, this Agreement shall be formed on the date on which both Parties have electronically signed the Agreement as recorded in the Customer's electronic contract management system.

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Annex 2 – Specification

1. Background: NHS.UK Content evidence checks

1.1 Introduction to NHS Digital

NHS Digital is arranged into 8 directorates, which work together to improve health and social care.

The NHS website www.nhs.uk is part of the Citizen Health technology business unit, which sits in the Product delivery directorate.

The Product delivery directorate designs and delivers new products and services commissioned by NHS England, NHS Improvement, National Institute for Health Protection and other arm's-length bodies to help citizens, patients and clinicians across primary, secondary and social care.

The NHS website for England is the UK's biggest health website with more than 50 million visits every month. We provide accessible and reliable health information to the public.

More than 2,000 organisations share our content, including other NHS websites, local authorities, charities and commercial organisations, from start-ups to large technology leaders.

1.2 Introduction to evidence check reviews

The NHS website includes thousands of articles on symptoms, conditions and treatments as well as hundreds of articles on healthy living. It aims to help people make good choices about their health and use of NHS health and care services.

The content has been created using the best available up-to-date evidence and is presented in a balanced manner so that users can understand and act on it.

As a minimum each piece of content is reviewed at least once every 3 years to ensure it is clinically and factually accurate and based on the latest clinical guidance.

For the last 2 years our content team has been focused on delivering COVID-19-related products and services, which has created a backlog of reviews.

We are investigating options to help deal with this backlog and one of these is to work with an external organisation to work on one stage of our review process. This would require the external organisation to check the information presented on a topic is clinically accurate and aligned with the latest evidence (the evidence check).

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