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Department
of Health &
Social Care

DHSC Procurement Services

Date: March 2021

Your ref: [Insert Supplier's reference, if any]

Our ref: [Insert Buyer's reference]

NHS Professionals Limited
Suites 1A and 1B
Breakspear Park
Hemel Hempstead
HP2 4TZ

Attn: Redacted

By email to: Redacted in line with Section 40 of The
FOIA

Dear Joe Tully,

Agreement for the provision of flexible worker services

Following your proposal for the supply of Flexible worker services to The Department of Health & Social Care, we are pleased confirm our intention to award this contract to you.

The attached contract details ("**Order Form**"), contract conditions and the **Annexes** set out the terms of the contract between The Department of Health & Social Care **and** NHS Professionals Limited for the provision of the deliverables set out in the Order Form.

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the deliverables. Please confirm your acceptance of the Conditions by signing and returning the Order Form to Redacted in line with Section 40 of The FOIA within **7** days from the date of this Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.

We will then arrange for Order Form to be countersigned which will create a binding contract between us.

Yours faithfully

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Order Form

1. Contract Reference	[Insert Buyer's contract reference number] TBC	
2. Date	[Insert date on which the last party signs] 21-05-2021 14:17 BST	
3. Buyer	Secretary of State for Health and Social Care acting as part of the Crown 39 Victoria Street Westminster London SW1H 0EU	
4. Supplier	NHS Professionals Limited Suites 1A and 1B Breakspear Park Hemel Hempstead HP2 4TZ	
5. The Contract	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any [Annex/Annexes].</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
6. Deliverables	Goods	None
	Services	During lockdown, workers will work remotely but will have a base at either <ul style="list-style-type: none"> • Skipton House, London • Quarry House, Leeds
7. Specification	The specification of the Deliverables is as set out in Annex 2	
8. Term	<p>The Term shall commence on 21st October 2020</p> <p>and the Expiry Date shall be 30th September 2021 unless it is otherwise extended or terminated in</p>	

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	<p>accordance with the terms and conditions of the Contract.</p> <p>The Buyer may extend the Contract for a period of up to 6 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 Contract shall apply throughout any such extended period.</p>	
9. Charges	The Charges for the Deliverables shall be as set out in Annex 3	
10. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>Department of Health and Social Care 39 Victoria Street London SW1H 0EU.</p> <p>Or email: Redacted in line with Section 40 of The FOIA</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to Redacted in line with Section 40 of The FOIA</p>	
11. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>Redacted in line with Section 40 of The FOIA</p> <p>Redacted in line with Section 40 of The FOIA</p>	
12. Address notices for	<p>Buyer:</p> <p>Redacted in line with Section 40 of The FOIA</p>	<p>Supplier:</p> <p>Redacted in line with Section 40 of The FOIA</p>

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	Redacted in line with Section 40 of The FOIA	
13. Key Personnel	Buyer: Redacted in line with Section 40 of The FOIA 	Supplier:
14. Procedures and Policies	<p>For the purposes of the Contract the Staff Vetting Procedures can be found in Annex 4</p> <p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (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 Deliverables.</p>	

Signed for and on behalf of the **Supplier**Signed for and on behalf of the **Buyer**

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<div>Name: [Insert name] Redacted in line</div> <div>[Insert job title] Re</div>	<div>Name: [Insert name] Redacted</div> <div>[Insert job title] Redacted in line with Section 40 of The Redacted in line</div>
<div>Date: 19-05-2021 17:43 BST</div>	<div>Date: 21-05-2021 14:17 BST</div>
<div>Signature: Redacted in line with Section 40 of The FOIA</div>	<div>Signature: Redacted in line with Section 40 of The FOIA</div>

Annex 1 – Authorised Processing Template

Contract:	<u>Agreement for the provision of flexible worker services</u>
Date:	12/03/2021
Description Of Authorised Processing	Details
Subject matter of the processing	Flexible Workers
Duration of the processing	During the period of the contract
Nature and purposes of the processing	The processing purpose is to recruit temporary workers and enable payment through the NHS Professionals' payroll of temporary workers who have worked assignments for DHSC.

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Type of Personal Data	<p>The categories of Personal Data that will be Processed under this Agreement:</p> <ul style="list-style-type: none"> • Personal and professional: <ul style="list-style-type: none"> a. NI Number b. Title c. First Name d. Last Name e. Full Address f. Post Code g. Email Address h. Gender i. Birth Date j. Emergency Contact Name k. Emergency Contact Number l. Staff Group m. Contracted Hours n. ESR Job Role o. Position/Title p. Band q. Professional Registration Membership Body r. Professional Registration Number s. Registration Expiry Date t. Occupational Health Information u. Disability Information <p>Payroll:</p> <ul style="list-style-type: none"> a) Bank/Building Society b) Bank Account Name c) Bank Account Number d) Bank Sort Code e) Bank Branch Name f) Building Society Account Number/Roll Number <p>Criminal Convictions and offences</p> <p>Criminal convictions and offences means any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.</p>
Categories of Data Subject	

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Annex 2 – Specification

RECRUITMENT OF FLEXIBLE WORKERS

NHS Professionals shall endeavour to recruit and employ the Flexible Workers requested by DHSC.

The initial requirement is set out below.

DHSC may amend all or any part of the initial requirement at any time, by agreement in writing with NHSP.

THE INITIAL REQUIREMENT

Roles filled at the date of this Agreement

Project Manager – Equipment Allocations (6).	Started Monday 26th October 2020.
Data Analyst (4).	Started Wednesday 21st October 2020.
Consumables Team Leader (8).	Started 3rd November 2020, working Tues & Weds up until after 20th then full time
Accounts Assistant (AP/AR) (3)	Started Thursday 22nd October 2020.
Ventilators and Equipment (5)	Started Monday 26th October 2020.
Consumables Group and Trust Stock Take lead role (7)	Started Tuesday 27th October 2020.
Deputy Programme Director (8)	Waiting for passport to come though (late November start date)
Consumables Senior Programme Manager (8)	Started 2nd November 2020
Project Manager (6)	Started Thursday 22nd October 2020

Roles outstanding at the date of this

Consumable Process Operator

Equipment Process Operations Project Manager

Strategic Allocations Business analyst

Equipment Contract Manager

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Data Management

Shortage Analyst/ SMOG Secretariat & Data Manager

International Distribution leader

CG & Stocktake Support

Admin Assistant - Consumables

PMO Support/CAG Secretariat

Future Org Design -HR

Senior Policy Officer

Policy Manager

1. MANAGEMENT OF FLEXIBLE WORKERS

1.1. Specific Obligations of DHSC

1.1.1. DHSC shall ensure that each Flexible Worker has received proper and sufficient orientation in relation to:

1.1.1.1. the tasks the Flexible Worker has to perform;

1.1.1.2, the relevant rules, policies, procedures and standards of DHSC (including health and safety);

1.1.1.3. all risks in the workplace relating to health and safety, fire and personal safety; and

1.1.1.4. the relevant legislation and codes of practice governing employees at work.

1.2. Specific obligations of NHS Professionals

NHS Professionals shall make available to DHSC, via the NHS Professionals' website (www.NHSProfessionals.nhs.uk) all relevant NHS Professionals policies, procedures and guidelines, and seek consultation on their development, as appropriate.

1.3. Cancellations by Flexible Workers

1.3.1. NHS Professionals will use its reasonable endeavours to provide alternative cover to DHSC for Flexible Workers who cancel Assignments.

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1.3.2. NHS Professionals will monitor cancellations and non-attendances by Flexible Workers to establish the reasons behind the cancellations and non-attendances.

1.3.3. NHS Professionals will take appropriate action in respect of Flexible Workers who persistently cancel or fail to attend for booked Shifts.

1.4. Working Time Regulations

1.4.1. NHS Professionals shall charge DHSC for annual leave payments made to Flexible Workers by NHS Professionals in accordance with the relevant legislation and NHS national agreements on terms of engagement.

1.4.2. Flexible Workers shall not be allowed to exceed the Working Time Regulations 1998 limitations on working hours through working for NHS Professionals alone. NHS Professionals and DHSC agree to work together, as appropriate, to observe the working time limits, rest periods and breaks for Flexible Workers. Where NHS Professionals or either party suspects that a Flexible Worker is exceeding the limits through working with more than one employer or otherwise, either NHS Professionals will or DHSC and NHS Professionals together will work to ensure the health and safety of the worker.

1.5. Furlough

Flexible Workers are not eligible for furloughing under the Government's Coronavirus Job Retention Scheme as NHS Professionals are owned by the Department of Health, are funded by public money and are providing services as part of the pandemic response.

1.6. Capability and disciplinary issues and investigations

Serious complaints and concerns

1.6.1. Where a party becomes aware of a serious issue or concern relating to conduct or capability or any other issue related to performance in relation to a Flexible Worker in connection with an Assignment, it shall notify the other as soon as reasonably practicable, and in any event within 48 hours of becoming aware of such an issue.

1.6.2. DHSC and NHS Professionals shall co-operate with each other in the conduct of the procedures referred to above and will agree to share information and or evidence where required including attendance at hearings.

NHS Professionals has in place a complaints and incidents policy. Complaints and incidents are logged and managed by NHS Professionals through its complaints and incident management system.

DHSC shall:

1.6.3. Identify a lead contact as the point of contact for working together over complaints and incidents.

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1.6.4. Share the outcome of any such investigation with NHS Professionals in order to ensure learning takes place to reduce the likelihood of a recurrence of the complaint or incident within the constraints of its obligations concerning data protection.

1.6.5. Agree the payment of any costs associated with a Flexible Worker attending an investigation or inquest following a complaint or incident.

NHS Professionals agrees to liaise with DHSC about the progress of the procedure and its outcome subject to its duties of confidentiality and in accordance with Data Protection Legislation.

NHS Professionals may disclose such information relating to the disciplinary or capability procedure and its outcome to other employers of the Flexible Worker as may be necessary to protect the vital interests of patients, NHS Professionals or staff, or in order to prevent fraud.

1.7. Restriction of Flexible Workers

1.7.1. Where DHSC or NHS Professionals have reasonable grounds to believe that a Flexible Worker's completion of an Assignment may compromise the safety of individuals or of others or following conduct that is deemed by DHSC or NHS Professionals to be serious enough to be incompatible with continuation of the Assignment, DHSC may restrict the Flexible Worker from carrying out any further Assignments ("restriction"). Where reasonably possible DHSC should inform NHS Professionals prior to the restriction or if not possible inform NHS Professionals at the earliest opportunity. The parties will then consider appropriate action in accordance with their procedures.

1.7.2. The 'restriction' shall be logged on the complaints and incident management system by DHSC and it will then be managed by NHS Professionals through its standard operating procedures.

1.7.3. In certain exceptional situations, both parties agree that in order to protect the interests of individuals or staff, or in order to prevent fraud, NHS Professionals or DHSC (as the case may be) may disclose such information relating to the restriction of the Flexible Worker to the other, or to other employers of the Flexible Worker, as may be necessary.

1.8. Payment to Flexible Workers restricted

Where DHSC restricts a Flexible Worker, or a Flexible Worker is formally excluded from duty by NHS Professionals during an Assignment, DHSC will be responsible for payment to NHS Professionals in respect of that Flexible Worker up to the point at which the Flexible Worker is restricted.

1.9. Grievances

1.9.1. Where a Flexible Worker has a grievance relating to their Assignment, they will be offered the opportunity, in the first instance, to resolve this informally by raising the issues with the lead contact of DHSC. Where this

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cannot be resolved informally this can be addressed in accordance with NHS Professionals grievance procedure.

1.9.2. DHSC agrees to co-operate with NHS Professionals in the implementation of such grievance procedure and provide access to such DHSC employees and documents as NHS Professionals may reasonably request through the DHSC lead.

1.9.3. NHS Professionals agrees to liaise with DHSC, where relevant, about the progress of the grievance procedure and its outcome, subject to its duties of confidentiality and in accordance with the Data Protection Legislation.

1.9.4. The 'grievance' should then be logged by the Flexible Worker on the online complaints system on the NHS Professionals website and shall then be managed by NHS Professionals through its complaints and incident management system.

2. COMPLAINTS AND INCIDENTS INVOLVING FLEXIBLE WORKERS

2.1. Complaints from the public about a Flexible Worker

Where DHSC receives a complaint from an individual or their representative that involves a Flexible Worker, this will be handled under the DHSC's own complaints policy. Where NHS Professionals receives a complaint directly from an individual or their representative, this will be forwarded to DHSC and handled in line with its complaints procedure. NHS Professionals will support DHSC in the management of this.

Where the complaint about the Flexible Worker is made by DHSC following an investigation into a complaint, DHSC will make the findings of that investigation available to NHS Professionals. DHSC will dispatch the final response to the complaint.

2.2. Incidents involving Flexible Workers

DHSC must report adverse incidents involving Flexible Workers in the first instance using the incident reporting system of DHSC. DHSC shall inform NHS Professionals of any incidents involving one of its Flexible Workers at the earliest opportunity and in any event within 48 hours.

2.3. Incidents in which Flexible Workers come to harm

Should an incident occur in which a Flexible Worker comes to harm, DHSC must take all necessary immediate action to ensure the safety of the Flexible Worker including accident and emergency or occupational health advice and the provision of appropriate follow-up care (and, for the avoidance of doubt, DHSC shall take all such action at its own cost and free of charge to NHS Professionals). Such an incident

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shall be reported, handled and investigated in the first instance through DHSC's incident policy. DHSC shall inform NHS Professionals at the earliest opportunity if the Flexible Worker suffers injury or other harm during an Assignment.

2.4. Complaints by a Flexible Worker about their Assignment

Where a Flexible Worker has concerns about clinical care, they will be encouraged to make their concerns known to the DHSC lead contact at the earliest opportunity. If they feel unable to raise the concern in this way and the matter is serious enough, NHS Professionals will raise the concern on their behalf. DHSC must examine the matter as appropriate and seek to resolve it with the Flexible Worker.

2.5. Public comment on NHS Professionals' performance

Unless subject to the provisions of the Public Interest Disclosure Act and DHSC's obligations under the FOIA, DHSC shall make no public statement or comment on NHS Professionals' performance under this Agreement or that of any Flexible Worker provided under it, without first:

2.5.1. Notifying NHS Professionals in writing of its intention to do so and of the proposed subject matter of such statement or comment.

2.5.2. Allowing NHS Professionals a reasonable opportunity in all the circumstances to make its own reasonable representations to DHSC on the proposed subject matter of such statement or comment.

2.5.3. Taking any such reasonable representations received from NHS Professionals into account before making any public statement or comment.

2.5.4. Having exhausted such other procedure(s) as may be applicable under this schedule.

If DHSC becomes aware that a third party has made, or may be intending to make, a public statement or comment on NHS professionals' performance under this Agreement or that of any Flexible Worker provided under it, DHSC shall forthwith bring that information to the attention of NHS Professionals, unless to do so would constitute a breach of some statutory duty owed by DHSC to such third party.

3. HEALTH AND SAFETY**3.1. NHS Professionals health and safety obligations**

3.1.1. NHS Professionals will have in place a risk management strategy, policy and standard operating procedure.

3.1.2. NHS Professionals will review the risk management strategy annually and ensure that Flexible Workers receive the training and subsequent refresher training required.

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3.1.3. NHS Professionals will maintain a risk register, sections of which by agreement with NHS Professionals may be shared with DHSC.

3.2. DHSC's health and safety obligations

3.2.1. Where a Flexible Worker is injured whilst working a Shift, DHSC shall offer a work health assessment and appropriate occupational health support to that Flexible Worker.

3.2.2. DHSC shall:

3.2.2.1. Provide information on whether an Assignment requires the Flexible Worker to work with vulnerable persons or children.

3.2.2.2. Provide information in connection with any risks to health and safety involved in the Assignment and the DHSC's policy for mitigating such risks.

3.2.2.3. Undertake the necessary risk assessment where the proposed Flexible Worker is known to be at potential individual risk, including, without limitation, by being pregnant.

3.2.3. The responsibility for reporting RIDDOR incidents which occur on the Assignment and involve a Flexible Worker lies with NHS Professionals. To allow a full report to be made to the health and safety executive within the prescribed timescales, NHS Professionals is dependent on information and support from DHSC. In the event of a RIDDOR reportable incident, DHSC shall immediately prepare and forward a copy of its incident report to NHS Professionals and shall provide NHS Professionals with such information and support as it may reasonably request. DHSC's obligations under this clause include reporting to NHS Professionals where it becomes aware that a Flexible Worker has been diagnosed with Covid 19 or a Flexible Worker is displaying symptoms suggesting that there is a material risk that the Flexible Worker has contracted Covid 19.

3.2.4. DHSC shall procure that all Flexible Workers who work on Assignments are entitled to participate in all occupational health programmes:

3.2.4.1. which DHSC requires its own staff or flexible workers of the type or types provided under this Agreement to take part in, or which DHSC offers to such staff or flexible workers; or

3.2.4.2. with which compliance is required or recommended by the Department of Health or other body with public health powers.

And DHSC shall be liable for all costs it incurs in complying with this clause.

3.3. DHSC shall comply with all statutory obligations applicable to it in relation to Flexible Workers engaged on Assignments at DHSC including, without limitation, those arising under the Health and Safety at Work Act 1974, the Employment Rights Act 1996, the Management of Health and Safety at Work Regulations 1999 and the Working Time Regulations 1998.

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Annex 3 – Charges

Pay rates agreed for Flexible Workers supplied at the date of this Agreement

Redacted in line with Section 40 of The FOIA

[Redacted content]

Daily rates for other Flexible Workers to be supplied pursuant to this Agreement

To be agreed between DHSC and NHSP on a case-by-case basis.

1. FINANCIAL SCHEDULE

This Schedule sets out the Charges payable by DHSC to NHS Professionals pursuant to the main body of this Agreement.

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2. THE CHARGES

2.1 The Charges payable by DHSC to NHS Professionals pursuant to clause 9 of the main body of this Agreement shall comprise:

2.1.1 the Transaction Charge referred to in clause 3.1, below;

2.1.2 the Flexible Workers Direct Labour Costs referred to in clause 4, below, including the On-Cost referred to in clause 4.5 and the holiday pay cost referred to in clause 4.3; and

2.1.3 the Temp to Perm Fee set out in clause 3.2.

3. THE TRANSACTION CHARGE AND TEMP TO PERM FEE

3.1 The Transaction Charge rate shall be **Red** of the pay rates of the Flexible Workers supplied under this Agreement.

3.2 In the event that DHSC wishes to employ or otherwise directly engage any of the Flexible Workers, DHSC shall pay to NHSP a temp-to-perm fee equal to: **Red** of the annual salary of the Flexible Worker x **(R)** – the number of weeks since the Flexible Worker's start date **Re**. For the purposes of this clause, the annual salary of the Flexible Worker shall be calculated as **Reda** the Flexible Worker's daily rate under this Agreement.

4. THE FLEXIBLE WORKERS DIRECT LABOUR COSTS

4.1 Labour costs

- i. DHSC agrees to pay to NHS Professionals any and all labour costs incurred by NHS Professionals with regard to Flexible Workers engaged in providing the Flexible Worker Services under this Agreement. Such costs shall include, without limitation, the items payable set out in clauses 4.2 to 4.4, 5 and 6 of this Schedule below, and any Additional Pension Costs, and shall be invoiced weekly.

4.2 Salary and Holiday Pay

4.2.1 NHS Professionals will make salary payments to the Flexible Workers at the appropriate pay rate agreed with DHSC (those already agreed being set out at Schedule 5). NHS Professionals shall also make holiday pay payments to Flexible Workers for annual leave accrued and taken in accordance with the Working Time Regulations 1998 and the Agency Workers Regulations 2010.

In line with DHSC guidance, Flexible Workers will take special leave with pay for a recommended period of self-isolation. Therefore, NHS Professionals will

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advise Flexible Workers that they are entitled to be paid for the Shifts they have already booked during the prescribed isolation period, where one of the following applies:

- They are officially diagnosed with COVID-19

4.3 Holiday (Working Time Regulations and Agency Workers Regulations)

- 4.3.1 NHS Professionals will charge DHSC for holiday for Flexible Workers in accordance with the Working Time Regulations 1998 and the Agency Workers Regulations 2010. DHSC shall pay an amount calculated as a percentage rate of the total Flexible Worker's pay (Holiday Pay Rate). The Holiday Pay Rate percentage to be charged to DHSC is **Redacted**

4.4 Employer's National Insurance Contribution Cost & Pension

- 4.4.1 DHSC shall pay an amount for Employer's National Insurance calculated as a percentage rate (On-Cost) of the total Flexible Workers pay including holiday pay. The On-Cost percentage rate to be charged to the DHSC is **Redacted**

5. TRAINING COSTS

All Flexible Workers shall undergo training, to be treated as the first Shift or Shifts worked. DHSC shall pay NHS Professionals the Flexible Worker Direct Labour Costs and the Transaction Charge for that training time.

6. EXPENSES

DHSC shall be responsible for agreeing and approving any expenses incurred by the Flexible Workers. Where DHSC has agreed and approved expenses, NHS Professionals shall pay those expenses to the Flexible Worker(s) and shall recharge DHSC for the amounts paid.

7. VAT

All elements of the Charges and all other charges are stated exclusive of VAT which, if payable, shall be payable to NHS Professionals in addition on presentation of a valid VAT invoice by NHS Professionals.

8. AUDITING

- 8.1 NHS Professionals will maintain accurate accounts and data of all payments, receipts and related data, relevant to the provision of the Services.
- 8.2 The internal audit function at NHS Professionals will be provided on a basis that is compliant with the NHS (and other relevant) internal audit standards. This will include compliance with the standards which require internal auditors to share relevant

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information between NHS Professionals and its clients. Any such information will be provided to DHSC for information only and DHSC shall not be entitled to place any reliance on such information and nor shall the internal auditors incur any liability to DHSC as a result of making such information available. Should it be required, formal certification of the operation of the systems of procedures and controls within NHS Professionals can be provided through access to the annual Head of Internal Audit Opinion.

- 8.3 For the purposes of external audit arrangements, should clients require, NHS Professionals' external auditors can be asked to consider the formal communication of their assessment of the systems of procedures and controls in place under the requirements of Statement of Auditing Standards Number 70.

9. BOOKING OF FLEXIBLE WORKERS

- 9.1 DHSC shall book Flexible Workers into Shifts on the NHS Professionals' System. NHS Professionals shall provide training to DHSC on the use of the system.

10. CANCELLATION OF ASSIGNMENTS

DHSC may cancel Shifts booked onto the NHS Professionals System by no less than one week's prior written notice to NHS Professionals.

11. FRAUDULENT CLAIMS

- 11.1 DHSC and NHS Professionals shall comply with the Secretary of State's Directions on Counter Fraud issued in December 1999 or any replacement directions.
- 11.2 All fraud referrals will be passed to the Local Counter Fraud Specialist at NHS Professionals.
- 11.3 Investigating officers should liaise with NHS Professionals' Director of Finance.
- 11.4 Fraud cases should be investigated in the manner described in the NHS Counter Fraud and Corruption manual.

12. NEW LAW

NHS Professionals reserves the right at any time during the term of this Agreement, on reasonable notice to DHSC, to increase the Charges (including, for the avoidance of doubt, any one or more elements of the Flexible Workers Direct Labour Costs) if any changes imposed by any new or changed applicable law or regulation, or by any court or governmental or administrative authority competent to require the same, increases the cost to NHS Professionals of providing the Services. Charges will be subject to mutual agreement, not to be unreasonably withheld

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13. INVOICE PAYMENT

- 13.1 NHS Professionals will invoice DHSC, weekly, in respect of the Transaction Charge and the Flexible Workers Direct Labour Costs. Invoices will be accompanied by supporting management expenditure summaries.
- 13.2 DHSC shall make all payments due under this Agreement without any deduction whether by way of set-off, counterclaim, discount or abatement or otherwise no later than 30 days from the date of the invoice.

14. LATE PAYMENT

DHSC agrees that NHS Professionals shall be entitled (without prejudice to any other right or remedy it may have) to charge interest on any amount outstanding to it under this Agreement, in accordance with the Payment of Commercial Debts (Interest) Act 1998.

Annex 4 – Staff Vetting Procedures and Requirements

All staff are required to sign an NDA agreement

COMPLIANCE AND PRE-EMPLOYMENT CHECKS

NHS Professionals will carry out recruitment checks in line with DHSC BPSS section 2 requirements. The Flexible Workers supplied pursuant to this Agreement shall undergo the following compliance and pre-employment checks:

Right to work and ID

Before supplying an individual to work for DHSC as a Flexible Worker, NHS Professionals shall ensure that the individual has provided information and supporting documentation in relation to their nationality and immigration status in the United Kingdom including right to work and/or visa.

DBS

NHS Professionals shall ensure that Flexible Workers supplied to DHSC have conducted an initial Declaration A check, completed by the applicant. DBS checks will be undertaken against all such applicants. During this period the worker will continue to be available to book Shifts.

Occupational Health

NHS Professionals shall ensure that Flexible Workers supplied to DHSC have completed a Declaration of Health Form online. Occupational Health Clearance will be issued and, where necessary, further action will be taken. During this period the worker will continue to be available to book Shifts.

Short form Terms

1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

"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;
"Charges"	means the charges for the Deliverables as specified in the Order Form;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
"Controller"	has the meaning given to it in the GDPR;
"Buyer"	means the person identified in the letterhead of the Order Form;
"Date of Delivery"	means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

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"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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 Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deliver"	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause []. Delivered and Delivery shall be construed accordingly;
"Existing IPR"	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
"Expiry Date"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Goods"	means the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the law and the exercise of 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 within the relevant industry or business sector;

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"Government Data"	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"New IPR"	Any and all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
"Order Form"	means the letter from the Buyer to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Processor"	has the meaning given to it in the GDPR;
"Purchase Order Number"	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended 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);
"Services"	means the services to be supplied by the Supplier to the Buyer under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description

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	and quality) as specified in the Order Form;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Term"	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause [] or terminated in accordance with the terms and conditions of the Contract;
"US-EU Privacy Shield Register"	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: https://www.privacyshield.gov/list ;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 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;

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- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

4. What needs to be delivered

4.1 All Deliverables

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

4.2 Goods clauses

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.

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- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) The Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- (l) The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its [sub-suppliers].

4.3 Services clauses

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any

damage that it has caused to the Buyer's premises or property, other than fair wear and tear.

- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality
- (i) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

5. Pricing and payments

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
 - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
 - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
 - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause **Error! Reference source not found..** Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause **Error! Reference source not found..**
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

6. The Buyer's obligations to the Supplier

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
 - (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
 - (d) the Supplier cannot suspend the ongoing supply of Deliverables.

- 6.2 Clause **Error! Reference source not found.** only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) mitigated the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action;
 - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

8. Supplier staff

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
 - (b) be vetted using Good Industry Practice and in accordance with the Staff Vetting Procedures;
 - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

9. Rights and protection

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
 - (b) the Contract is executed by its authorised representative;
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
 - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
 - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
 - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause **Error! Reference source not found.** are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
 - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

10. Intellectual Property Rights (IPRs)

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:
- (a) receive and use the Deliverables;
 - (b) use the New IPR.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause **Error! Reference source not found.** or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for the Buyer the rights in clauses **Error! Reference source not found.** and **Error! Reference source not found.** without infringing any third party intellectual property rights;
 - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

11. Ending the contract

- 11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.
- 11.3 **Ending the Contract without a reason**
The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 30 days' written notice and if it's terminated clause **Error! Reference source not found.** to **Error! Reference source not found.** applies.

11.4 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
- (i) there's a Supplier Insolvency Event;
 - (ii) if the Supplier repeatedly breaches the Contract in a way 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 Contract;
 - (iii) if the Supplier 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;
 - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
 - (v) if the Buyer discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
 - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause **Error! Reference source not found.** applies.

11.5 What happens if the Contract ends

Where the Buyer terminates the Contract under clause **Error! Reference source not found.** all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

11.6 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the

Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

- (b) If a Supplier terminates the Contract under clause **Error! Reference source not found.**:
 - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
 - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
 - (iii) clauses **Error! Reference source not found.** to **Error! Reference source not found.** apply.

11.7 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause **Error! Reference source not found.**) any necessary variation required by clause **Error! Reference source not found.**, but the Supplier may not either:
 - (i) reject the variation;
 - (ii) increase the Charges, except where the right to partial termination is under clause **Error! Reference source not found.**
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
 - (a) any indirect losses;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause **Error! Reference source not found.**, neither Party limits or excludes any of the following:
 - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.

- 12.4 In spite of clause **Error! Reference source not found.**, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

13. Obeying the law

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
 - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
 - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
 - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-thegovernment-buying-standards-gbs>
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
- 13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32
- 13.4 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

14. Data protection

- 14.1 The Buyer and the Supplier are Controllers for the purposes of the Data Protection Legislation.
- 14.2 Both parties must process Personal Data and ensure that their Staff process Personal Data only in accordance with this Contract.
- 14.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six Months.

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- 14.5 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Buyer.
- 14.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 14.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
 - (b) restore the Government Data itself or using a third party.
- 14.8 The Supplier must pay each Party's reasonable costs of complying with clause **Error! Reference source not found.** unless the Buyer is at fault.
- 14.9 Each party must give all reasonable assistance to the other in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
 - (b) the necessity and proportionality of the processing operations;
 - (c) the risks to the rights and freedoms of Data Subjects;
 - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 14.10 Each party must notify the other immediately if it thinks the other's instructions breach the Data Protection Legislation.
- 14.11 Each party must put in place appropriate Protective Measures to protect against a Data Loss Event.
- 14.12 If lawful to notify, each party must notify the other if the it is required to process Personal Data by Law promptly and before processing it.
- 14.13 Each party must take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the party's duties under this clause 14;
 - (b) are subject to appropriate confidentiality undertakings;
 - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the other party or as otherwise allowed by the Contract;
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 14.14 Each party must not transfer Personal Data outside of the EU unless all of the following are true:
- (a) it has obtained prior written consent of the other;

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- (b) the other party has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);
 - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
 - (d) it meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - (e) where a party is not bound by Data Protection Legislation it must use its best endeavours to help the other meet its own obligations under Data Protection Legislation; and
 - (f) it complies with the other's reasonable prior instructions about the processing of the Personal Data.
- 14.15 Each party must notify the other immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
 - (f) becomes aware of a Data Loss Event.
- 14.16 Any requirement to notify under clause 14.15 includes the provision of further information to the other in stages as details become available.
- 14.17 Each party must promptly provide the other with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause **Error! Reference source not found..** This includes giving the other:
- (a) full details and copies of the complaint, communication or request;
 - (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
 - (c) any Personal Data it holds in relation to a Data Subject on request;
 - (d) assistance that it requests following any Data Loss Event;
 - (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.
- 14.18 Each party must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the party employs fewer than 250 staff, unless either the other party determines that the processing:
- (a) is not occasional;
 - (b) includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR;
 - (c) is likely to result in a risk to the rights and freedoms of Data Subjects.

- 14.19 Each party must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the other their contact details.
- 14.20 Before allowing any Subprocessor to process any Personal Data, a party must:
- (a) notify the other in writing of the intended Subprocessor and processing;
 - (b) obtain the written consent of the other;
 - (c) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
 - (d) provide the other with any information about the Subprocessor that the other reasonably requires.
- 14.21 A party remains fully liable for all acts or omissions of any Subprocessor.
- 14.22 At any time each party can, with 30 Working Days notice to the other, change this clause 14 to:
- (a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;
 - (b) ensure it complies with guidance issued by the Information Commissioner's Office.
- 14.23 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 14.24 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
 - (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - (d) securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
 - (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause **Error! Reference source not found.** and any Data Protection Legislation.

15. What you must keep confidential

- 15.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause **Error! Reference source not found.**, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

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- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
- (f) to its auditors or for the purposes of regulatory requirements;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis;
- (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

15.4 The Buyer may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament;
- (e) under clauses **Error! Reference source not found.** and **Error! Reference source not found.**

15.5 For the purposes of clauses **Error! Reference source not found.** to **Error! Reference source not found.** references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause **Error! Reference source not found.**

15.6 Information which is exempt from disclosure by clause **Error! Reference source not found.** is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

16.1 Both buyer and supplier must share with each other, within 48 hours, if it receives a Request For Information.

- 16.2 Within the required timescales both parties must give full co-operation and information needed so the other party can:
- (a) comply with any Freedom of Information Act (FOIA) request;
 - (b) comply with any Environmental Information Regulations (EIR) request.
- 16.3 Both parties may talk to each other to help it decide whether to publish information under clause **Error! Reference source not found.** However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

17. Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

18. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

19. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

20. Circumstances beyond your control

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- (a) provides written notice to the other Party;
 - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under clause **Error! Reference source not found.**:
- (a) each party must cover its own losses;
 - (b) clause **Error! Reference source not found.** to **Error! Reference source not found.** applies.

21. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

22. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

23. Transferring responsibilities

- 23.1 The Supplier cannot assign the Contract without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 23.3 When the Buyer uses its rights under clause **Error! Reference source not found.** the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 23.4 The Supplier can terminate the Contract novated under clause **Error! Reference source not found.** to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
 - (b) the scope of their appointment;
 - (c) the duration of their appointment.

24. Changing the contract

- 24.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

25. How to communicate about the contract

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
- 25.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Preventing fraud, bribery and corruption

- 26.1 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
 - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act

in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.

- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause **Error! Reference source not found.** and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause **Error! Reference source not found.** or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
 - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

27. Equality, diversity and human rights

- 27.1 The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
 - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 27.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

28. Health and safety

- 28.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable law regarding health and safety;
 - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 28.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.

29. Environment

- 29.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 29.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

30. Tax

- 30.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 30.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
 - (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 30.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause **Error! Reference source not found.**, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
 - (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause **Error! Reference source not found.** or confirms that the Worker is not complying with those requirements;
 - (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

31. Conflict of interest

- 31.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.

- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

32. Reporting a breach of the contract

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause **Error! Reference source not found.**, or clauses **Error! Reference source not found.** to **Error! Reference source not found.**
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause **Error! Reference source not found.**

33. Resolving disputes

- 33.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses **Error! Reference source not found.** to **Error! Reference source not found.**
- 33.3 Unless the Buyer refers the dispute to arbitration using clause **Error! Reference source not found.**, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
 - (a) determine the dispute;
 - (b) grant interim remedies;
 - (c) grant any other provisional or protective relief.
- 33.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 33.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause **Error! Reference source not found.**, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause **Error! Reference source not found.**

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33.6 The Supplier cannot suspend the performance of the Contract during any dispute.

34. Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.