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## Cover Letter



UK Health  
Security  
Agency

UKHSA Science Commercial  
10 South Colonnade  
London  
E14 5EA

[www.gov.uk/ukhsa](http://www.gov.uk/ukhsa)

CN Bio Innovations Limited  
332 Cambridge Science Park  
Milton Road, Cambridge  
CB4 0WN  
United Kingdom

Attn: [REDACTED]

By email to: [REDACTED]

Date: 1<sup>st</sup> December 2023  
Our ref: C212249

Dear [REDACTED],

Following your proposal for the supply of [REDACTED] commercialised ready-to-use PhysioMimix OOC Single-Organ Standard Systems to UK Health Security Agency, we are pleased to confirm award of this Contract to you.

The attached Order Form, contract Conditions and Annex 1 set out the terms of the Contract between UK Health Security Agency and CN Bio Innovations 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 remember to include the reference number(s) above in any future communications relating to this Contract.

Yours sincerely,

[REDACTED]

## I. Order Form

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## The Short Form Contract

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		Goods are to be delivered subject to the Delivered Duty Paid.																																									
	Services	None																																									
6. Specification	The specification of the Deliverables is as set out below:																																										
	PhysioMimix™ OOC System																																										
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	<p>Each system includes:</p> <ul style="list-style-type: none"> <li>- 1 (one) Controller, 1 (one) docking station and 3 (three) Single-organ drivers</li> <li>- One standard software licence</li> <li>- One-year manufacturer's warranty subject to the terms set out in Clause 4 of the Conditions.</li> </ul> <p>The PMX-OOC system is primarily sold and used in a Containment Level 2 laboratory space where any defined training, maintenance and support is provided by the Supplier under its standard terms and conditions with decontamination as required.</p> <p>Where a PMX-OOC system is used in a Containment Level 3 ("CL3") laboratories, especially where agents used present a greater risk to health, a more extensive risk appraisal will need to be carried out by the Buyer to ensure appropriate mitigations are in place. This will differ based on the classification of the laboratory where it will be used along with the classification of the target agents.</p> <p>The Supplier will support the Buyer by providing information related to likely system failure modes such that a realistic appraisal of risk and the required controls can be made by the Buyer prior to use. The Buyer should be aware of, and make appropriate safeguards with respect to, the open-well nature of PMX plates. The Supplier will not be held responsible for any airborne exposure to infectious agent as a result of this design.</p> <p>It is not anticipated that any Supplier staff will enter the Buyer's CL3 laboratories.</p> <p>(the "<b>Specification</b>")</p> <p>Maintenance and support for the Goods will be covered by the addendum in "Bespoke Technical and Scientific Support Proposal". In some cases parts of the Goods may have to be securely disposed of and replaced where safe decontamination cannot be guaranteed by the Buyer. All end-of-life parts are subject to safe disposal by the Buyer.</p>
<b>7. Start Date</b>	This Contract shall be deemed to have commenced on the date of counter signature of this Contract document by UKHSA (the " <b>Commencement Date</b> ")
<b>8. Expiry Date</b>	This Contract shall unless terminated earlier, or extended, in accordance with its terms, expire on 29 <sup>th</sup> March 2024 (the " <b>Term</b> ").
<b>9. Extension Period</b>	Not applicable
<b>10. Buyer Cause</b>	Not used
<b>11. Optional Intellectual Property Rights ("IPR") Clauses</b>	Not applicable



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12. Charges	<p>The Charges for the Deliverables shall be as set out below</p> <p>The maximum value of the Goods that can be ordered under this Contract is Four Hundred thousand pounds (£400,000.00) excluding VAT (the “Contract Price”).</p> <p>The charge for the services shall be per below Table 1.</p> <p>Table 1</p> <table><tr><th>Description</th><th>Item Number</th><th>Quantity</th><th></th><th></th></tr><tr><td>PhysioMimix OOC Single-Organ Standard System</td><td>PMX-T1-SYS</td><td>1</td><td></td><td></td></tr><tr><td colspan="3"></td><td colspan="2"></td></tr></table>	Description	Item Number	Quantity			PhysioMimix OOC Single-Organ Standard System	PMX-T1-SYS	1							
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13. Payment	<p>Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier.</p> <p>All invoices must be sent, quoting a valid Purchase Order Number (PO Number), to: [REDACTED]</p> <p>Following the countersignature of this contract by UKHSA, the Buyer will send a unique purchase order (the ‘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, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may 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 team by email to: [REDACTED]</p>															
14. Data Protection Liability Cap	Not applicable															
15. Progress Meetings and Progress Reports	Not applicable															
16. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>Name: [REDACTED]</p> <p>E-mail: [REDACTED]</p>															
17. Supplier Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>Name: [REDACTED]</p> <p>E-mail: [REDACTED]</p>															

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<b>18. Address for notices</b>	<p><b>Buyer:</b></p> <p>UK Health Security Agency [REDACTED]</p> <p>Email: [REDACTED]</p> <p>UK Health Security Agency, 10 South Colonnade, London, E14 5EA, United Kingdom</p> <p><b>Supplier:</b></p> <p>CN Bio Innovations Limited [REDACTED]</p> <p>Email: [REDACTED]</p> <p>CN Bio Innovations Limited, 332 Cambridge Science Park Milton Road, Cambridge, CB4 0WN, United Kingdom</p>
<b>19. Key Staff</b>	<p><b>Key Staff Role:</b> Primary delivery contact</p> <p><b>Key Staff Name:</b> [REDACTED]</p> <p><b>Contact Details:</b> [REDACTED]</p> <p><b>Key Staff Role:</b> Senior Operational Manager</p> <p><b>Key Staff Name:</b> [REDACTED]</p> <p><b>Contact Details:</b> [REDACTED]</p> <p><b>Key Staff Role:</b> Project Team Lead - VNAT</p> <p><b>Key Staff Name:</b> [REDACTED]</p> <p><b>Contact Details:</b> [REDACTED]</p>
<b>20. Procedures and Policies</b>	<p>20.1 For the purposes of this Contract the Buyer may require the Supplier to ensure that all personnel employed in the delivery of the deliverables has undertaken a Disclosure and Barring Service check.</p> <p>20.2 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> <p>20.3 Pricing and individuals' contact details shall be deemed to be Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.</p>

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21. Special Terms	Not applicable
22. Incorporated /terms	<p>The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"><li>a) This Order Form and its appendices</li><li>b) The terms set out in this Order Form and the Conditions</li><li>c) The Specifications</li></ul>

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

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

DocuSigned by:



Date Signed: 04/12/2023

DocuSigned by:



Date Signed: 4th December 2023

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## II. Short form Terms (“Conditions”)

### 1 DEFINITIONS USED IN THE CONTRACT

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

<b>“Affiliates”</b>	in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “ <b>Controlled</b> ” shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>“Audit”</b>	<p>the Buyer’s right to:</p> <ul style="list-style-type: none"> <li>(a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables;</li> <li>(c) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;</li> <li>(d) identify or investigate actual or suspected breach of clauses 4 to 34 (inclusive), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>(e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>(f) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>(g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> <li>(h) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer’s annual and interim reports and accounts;</li> <li>(i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;</li> </ul>
<b>“Beneficiary”</b>	A Party having (or claiming to have) the benefit of an indemnity under this Contract;



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<b>“Buyer Cause”</b>	N/A
<b>“Buyer”</b>	the person named as Buyer in the Order Form. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
<b>“Charges”</b>	the charges for the Deliverables as specified in the Order Form;
<b>“Claim”</b>	any claim which it appears that the Buyer is, or may become, entitled to indemnification under this Contract;
<b>“Conditions”</b>	means these short form terms and conditions of contract;
<b>“Confidential Information”</b>	all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which <ul style="list-style-type: none"> <li>(a) is known by the receiving Party to be confidential;</li> <li>(b) is marked as or stated to be confidential; or</li> <li>(c) ought reasonably to be considered by the receiving Party to be confidential;</li> </ul>
<b>“Conflict of Interest”</b>	a 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;
<b>“Contract”</b>	the contract between the Buyer and the Supplier which is created by the Supplier’s counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes;
<b>“Controller”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Crown Body”</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

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<b>“Data Protection Legislation”</b>	<p>(a) the UK GDPR,</p> <p>(b) the DPA 2018;</p> <p>(c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and</p> <p>(d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);</p>
<b>“Data Protection Liability Cap”</b>	has the meaning given to it in row 14 of the Order Form;
<b>“Data Protection Officer”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Data Subject Access Request”</b>	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;
<b>“Data Subject”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Deliver”</b>	hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and stacking and any other specific arrangements agreed in accordance with clause 4.2. “Delivered” and “Delivery” shall be construed accordingly;
<b>“Deliverables”</b>	means the Goods, Services, and/or software to be supplied under the Contract as set out in the Order Form;
<b>“DPA 2018”</b>	the Data Protection Act 2018;
<b>“Documentation”</b>	means any user manuals, instructions for use, operating procedures, assay or application guides, and any other documentation (in hard copy or electronic form including by email) for the Goods which Supplier may provide to Buyer from time to time
<b>“EU GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>“Existing IPR”</b>	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);
<b>“Expiry Date”</b>	the date for expiry of the Contract as set out in the Order Form;

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<b>“FOIA”</b>	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;
<b>“Force Majeure Event”</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the <b>“Affected Party”</b>) which prevent or materially delay the Affected Party from performing its obligations under the Contract;</li> <li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(c) acts of a Crown Body, local government or regulatory bodies;</li> <li>(d) fire, flood or any disaster; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>(a) 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;</li> <li>(b) 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</li> <li>(c) any failure of delay caused by a lack of funds,</li> </ul> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>“Good Industry Practice”</b>	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;
<b>“Goods”</b>	the goods to be supplied by the Supplier to the Buyer under the Contract;
<b>“Government Data”</b>	<ul style="list-style-type: none"> <li>(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: <ul style="list-style-type: none"> <li>(i) are supplied to the Supplier by or on behalf of the Buyer; or</li> </ul> </li> </ul>

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	<p>(ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Controller;</p>
<b>“Indemnifier”</b>	a Party from whom an indemnity is sought under this Contract;
<b>“Independent Controller”</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>“Information Commissioner”</b>	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;
<b>“Insolvency Event”</b>	<p>in respect of a person:</p> <p>(a) if that person is insolvent;</p> <p>(b) where that person is a company, LLP or a partnership, 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);</p> <p>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s assets or business;</p> <p>(d) if the person makes any composition with its creditors; or</p> <p>(e) 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;</p>
<b>“IP Completion Day”</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>“Joint Controller Agreement”</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in [REDACTED] of Annex 1 – Processing Personal Data;
<b>“Joint Controllers”</b>	Where two or more Controllers jointly determine the purposes and means of processing;
<b>“Key Staff”</b>	any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier;
<b>“Law”</b>	any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, mandatory guidance regulatory policy and codes of practice as notified in writing to the other Party, judgment of a relevant court of law,

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	or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Material Breach”</b>	a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied).
<b>“National Insurance”</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>“New IPR Items”</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>“New IPR”</b>	all any intellectual property rights in any materials created or developed by or on behalf of the Supplier (excluding the Results) pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>“Open Licence”</b>	means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> as updated from time to time and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> as updated from time to time;
<b>“Order Form”</b>	the order form signed by the Buyer and the Supplier printed above these Conditions;
<b>“Party”</b>	the Supplier or the Buyer (as appropriate) and “Parties” shall mean both of them;
<b>“Personal Data Breach”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
<b>“Personal Data”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Prescribed Person”</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> as updated from time to time;



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<b>“Processor Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>“Processor”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Protective Measures”</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>(a) the nature of the data to be protected;</li> <li>(b) harm that might result from Data Loss Event;</li> <li>(c) state of technological development;</li> <li>(d) the cost of implementing any measures;</li> </ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<b>“Purchase Order Number” or “PO Number”</b>	the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract;
<b>“Rectification Plan”</b>	<p>a plan (or revised plan) to rectify a Party’s Material Breach which shall include:</p> <ul style="list-style-type: none"> <li>(a) full details of the Material Breach that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Material Breach; and</li> <li>(c) the steps which the breaching Party proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</li> </ul>
<b>“Regulations”</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>“Request For Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term <b>“request”</b> shall apply);
<b>Results</b>	any outcome of the research conducted by the Buyer using the Goods and Supplier’s Existing IPR;
<b>“Services”</b>	the services to be supplied by the Supplier to the Buyer under the Contract;

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<b>“Specification”</b>	the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>“Staff Vetting Procedures”</b>	vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer’s procedures or policies for the vetting of personnel as specified in the Order Form or provided to the Supplier in writing following agreement to the same by the Supplier from time to time;
<b>“Start Date”</b>	the start date of the Contract set out in the Order Form;
<b>“Sub-Contract”</b>	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<b>“Subcontractor”</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>“Subprocessor”</b>	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>“Supplier Staff”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract;
<b>“Supplier”</b>	the person named as Supplier in the Order Form;
<b>“Term”</b>	the period from the Start Date to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract;
<b>“Third Party IPR”</b>	intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>“Transparency Information”</b>	In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract, including any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be published by the Buyer to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder) ( <a href="https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder">https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder</a> ) as updated from time to time and Public Procurement Policy

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	Note 01/17 (update to transparency principles) where applicable ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles">https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles</a> ) as updated from time to time except for:  (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and  (b) Confidential Information;
<b>“UK GDPR”</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);
<b>“VAT”</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Worker”</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">Tax Arrangements of Public Appointees</a> ) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) as updated from time to time applies in respect of the Deliverables; and
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2 UNDERSTANDING THE CONTRACT

### 2.1 In the Contract, unless the context otherwise requires:

- 2.1.1 references to numbered clauses are references to the relevant clause in these Conditions;
- 2.1.2 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;
- 2.1.3 references to “writing” include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act) and to any legislation or byelaw made under that Law;
- 2.1.5 the word “including”, “for example” and similar words shall be understood as if they were immediately followed by the words “without limitation”;

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- 2.1.6 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.

### 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 (if any) 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

- 4.1.1 The Supplier must provide Deliverables:
- 4.1.1.1 in accordance with the Specification and the Contract;
  - 4.1.1.2 using reasonable skill and care;
  - 4.1.1.3 using Good Industry Practice;
  - 4.1.1.4 using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - 4.1.1.5 within the timeframes agreed; and
  - 4.1.1.6 that comply with all Law.
- 4.1.2 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 (defined below) and that the Goods will conform in all material respects with the Specification when used with Supplier consumables (“Warranty”).
- “Obvious Defects” means any defects that are visible or easily detectable without any analysis in a laboratory.
- Notwithstanding Clause 4.1.3, the Supplier does not warrant that the Goods will meet the Buyer's requirements.
- 4.1.3 If Supplier is in breach of Clause 4.1.2, the Supplier will, in consultation with the Buyer, agree to do one of the following, and prioritise performing one of the below, where possible and subject to clause 4.1.4 below:

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- 4.1.3.1 repair the Goods (initially by means of telephone support);
    - 4.1.3.2 replace the Goods; or
    - 4.1.3.3 refund the amount paid for the Goods, less a reasonable allowance for usage, upon its return to Supplier.
  - 4.1.4 The Warranty shall not apply to any defect, failure or damage caused by improper storage, improper use or improper or inadequate maintenance and care. In particular Supplier shall have no obligation under the Warranty to:
    - 4.1.4.1 to repair damage resulting from attempts by personnel other than Supplier representatives to repair or service the Goods unless directed by a Supplier representative.
    - 4.1.4.2 to repair damage, malfunction, or degradation of performance resulting from improper use or connection to incompatible equipment or otherwise than in accordance with the Documentation and Supplier's instructions provided to the Buyer from time to time, including but not limited to: (i) the use of non-Supplier consumables or supplies not authorised by Supplier; (ii) failure to perform user care and cleaning as prescribed in the Documentation; or (iii) use of the Goods in an environment not meeting the operating specifications set out in the documentation;
    - 4.1.4.3 to replace items that have been abused, misused, or tampered with in any way other than by Supplier or its representatives.
  - 4.1.5 The above Warranty is given by Supplier with respect to the Goods in lieu of any other warranties, express or implied. All other warranties or conditions, whether expressed or implied as to performance, merchantability, quality, condition, description, compliance with sample, fitness for purpose (other than non-infringement of third party intellectual property set out in clause 10), whether statutory or otherwise, are excluded to the fullest extent permitted by applicable law.
  - 4.1.6 Unless stated within this Contract, supplier's responsibility to repair, replace, or offer a refund for defective products as set out above is, to the fullest extent permitted by applicable law, the sole and exclusive remedy provided to the Buyer for any breach of the Conditions.
- 4.2 Goods clauses
- 4.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
  - 4.2.2 The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.
  - 4.2.3 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 3 Working Days of Delivery.



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- 4.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 4.2.5 The Supplier must Deliver the Goods within the timeframe and to the location specified in the Order Form, during the Buyer's working hours (unless otherwise specified in the Order Form).
- 4.2.6 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 4.2.7 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 4.2.8 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 4.2.9 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 provided the safety issues or defects that might endanger health or hinder performance are solely related to the Goods as delivered to the Buyer and are not caused by Buyer's use of such Goods
- 4.2.10 The Buyer shall indemnify the Supplier against any third-party claims brought against the Supplier in respect of the Buyer's use of the Goods that is not in accordance with the Documentation.
- 4.2.11 In accordance with the timeframe and to the location specified in the Order Form, late Delivery of the Goods will be a default of the Contract..
- 4.2.12 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 (except for the delivery costs as set out in the Order Form) 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 the Buyer 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 Subcontractors or Supplier Staff.

- 4.3 Services clauses  
Not applicable.

## 5 PRICING AND PAYMENTS

- 5.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the charges in the Order Form.
- 5.2 All Charges:
  - 5.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and

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- 5.2.2 include all costs and expenses 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 invoice or in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
- 5.4.1 includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer; and
- 5.4.2 includes a detailed breakdown of Deliverables which have been delivered.
- 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 11.7. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 36.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer 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**

Not applicable

**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 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Buyer or an auditor can Audit the Supplier no more than once per calendar year.
- 7.4 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Breach by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 7.6 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 7.6.1 tell the Buyer and give reasons;
- 7.6.2 propose corrective action; and

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- 7.6.3 provide a deadline for completing the corrective action.
- 7.7 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:
- 7.7.1 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; and
- 7.7.2 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) and the consequences of termination in Clause 11.5.1 shall apply.
- 7.8 If there is a Material Breach, the breaching Party must notify the non-breaching Party within 5 Working Days of the breaching Party becoming aware of the Material Breach. The non-breaching Party may request that the breaching Party provide a Rectification Plan within 10 Working Days of the non-breaching Party's request alongside any additional documentation that the non-breaching Party requires. Once such Rectification Plan is agreed between the Parties (without the non-breaching Party limiting its rights) the breaching Party must immediately start work on the actions in the Rectification Plan at its own cost.

## 8 SUPPLIER STAFF

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- 8.1.1 be appropriately trained and qualified;
- 8.1.2 be vetted in accordance with the Staff Vetting Procedures; and
- 8.1.3 comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where the 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 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
- 8.6 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:
- 8.6.1 requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);

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8.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or

8.6.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.

8.7 The Supplier shall ensure that no person who discloses that they have 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.

## 9 RIGHTS AND PROTECTION

9.1 The Supplier warrants and represents that:

9.1.1 it has full capacity and authority to enter into and to perform the Contract;

9.1.2 the Contract is entered into by its authorised representative;

9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

9.1.4 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;

9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and the Buyer to receive the Deliverables;

9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and

9.1.7 it is not impacted by an Insolvency Event.

9.2 The warranties and representations in clause 3.3 and clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

9.3 The Supplier indemnifies the Buyer against each of the following:

wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract.

If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Buyer.

9.4 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

9.5 The Buyer will at all times abide by and fully comply with all applicable Laws or regulations affecting the use of the Goods and:

9.5.1 will only use the Goods in accordance with the Documentation;

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- 9.5.2 ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed (and not modified unless instructed by Supplier), and operated in a proper manner by trained competent staff in accordance with the Documentation and any other operating instructions issued by Supplier from time to time in relation to the use of the Goods;
  - 9.5.3 take such steps (including compliance with all safety and usage instructions provided by Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Goods are at all times safe and without risk to health and (in respect of the Goods only) when it is being set, used, cleaned or maintained by a person at work; and
  - 9.5.4 not use the Goods for any unlawful purpose.
- 9.6 The Buyer will not alter, cover, remove or tamper with any label, notices or other marks (including without limitation CE marks, details of patents or restrictions on use or notices that any Supplier Existing IPRs in the Goods are owned by Supplier or a third party) any Supplier trade marks, numbers, or other means of identification used on or in relation to the Goods.
- 9.7 The Buyer will provide all information and assistance reasonably required by Supplier to enable Supplier to perform its obligations under the Conditions, including providing or procuring access to any relevant premises and a suitable and safe working environment for the delivery, repair, storage or maintenance of the Goods.
- 9.8 The Buyer acknowledges and agrees that the intended use of the Goods as sold by Supplier is for internal research purposes only. For the avoidance of any doubt, the Buyer shall not be permitted to resale the Goods without first consulting with Supplier, and it is not permitted to resale the Goods to a) a competitor of Supplier; b) in breach of any UK export laws, and c) when the Goods have reached their end of life.
- 9.9 For the avoidance of doubts, the research results derived from the use of the Goods shall solely belong to the Buyer and the Supplier shall not be entitled to the Results;
- 9.10 If Supplier's performance of any of its obligations under the Conditions is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligations (Buyer Default):
- 9.10.1 Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from Supplier's failure or delay to perform any of its obligations as set out in this Condition 9.11; and
  - 9.10.2 The Buyer shall reimburse Supplier on written demand for any costs or losses sustained or incurred by Supplier arising directly or indirectly from the Buyer Default.



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**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, non-transferable, worldwide licence to use the Supplier's Existing IPR to enable the Buyer to:

10.1.1 receive and use the Deliverables for any purpose subject to Clause 9.9; and

10.1.2 use the New IPR.

The termination or expiry of the Contract does not terminate any licence granted under this clause 10.

10.2 Buyer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any software embodied in the Goods in whole or in part unless it is licensed subject to an open-source licence.

The termination or expiry of the Contract does not terminate any licence granted under this clause 10.

10.3 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, copy, and adapt any Existing IPRs and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 15 (What you must keep confidential). For the avoidance of doubt, the Supplier is not permitted to commercially exploit any Buyer's Existing IPR and the New IPR developed under the Contract.

10.4 Any Results will be solely owned by the Buyer and the Supplier shall not have access to the same.

10.5 Buyer agrees not to assert any claim or commence or prosecute any action, suit or proceeding against Supplier or against any of its customers, whether direct or indirect based in whole or in part on infringement of any New IPR, arising out of any past, present or future manufacture, having manufactured, use, sale, offer for sale, lease, import, export or other disposition of Supplier assays and applications throughout the world.

10.6 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR and keep this record updated throughout the Term.

10.7 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.

10.8 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 this clause 10 or otherwise agreed in writing.

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- 10.9 Subject to Clause 27, 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 will pay the Buyer for the reasonable fees paid to third party lawyers to defend the IPR Claim and damages and costs finally awarded by the court or for reasonable amounts paid in any settlement of such IPR Claim but in each case, only to the extent that such fees, damages, costs or amounts paid in settlement relate to the Deliverables.
- 10.10 Supplier will have no liability arising from infringement by combination of the Deliverables with any other product not supplied by Supplier.
- 10.11 If an IPR Claim is made or anticipated, the Supplier must at its own option and expense, either:
- 10.11.1 obtain for the Buyer the rights in clause 10.1 without infringing any third party intellectual property rights; and
  - 10.11.2 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.
  - 10.11.3 If the Supplier is not able to resolve the IPR Claim to the Buyer's reasonable satisfaction within a reasonable time, the Buyer may give written notice that it terminates the Contract from the date set out in the notice, or where no date is given in the notice, the date of the notice. On termination, the consequences of termination in clauses 11.5.1 shall apply.
- 10.12 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless:
- 10.12.1 the Buyer gives its approval to do so; and
  - 10.12.2 one of the following conditions applies:
    - 10.12.2.1 the owner or an authorised licensor of the relevant Third Party IPR has granted the Buyer a direct licence that provides the Buyer with the rights in clause 10.1; or
    - 10.12.2.2 if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a direct licence to the Third Party IPR as set out in clause 10.12.2.1:
      - (a) the Supplier provides the Buyer with details of the licence terms it can obtain and the identity of those licensors;
      - (b) the Buyer agrees to those licence terms; and
      - (c) the owner or authorised licensor of the Third Party IPR grants a direct licence to the Buyer on those terms; or
    - 10.12.2.3 the Buyer approves in writing, with reference to the acts authorised and the specific intellectual property rights involved.
- 10.13 Unless set out within the Contract, the remedies provided in this Clause 10 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Deliverables.

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- 10.14 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it, does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

## 11 ENDING THE CONTRACT

- 11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date 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
- 11.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice, and if it's terminated clause 11.7.2 applies.
- 11.4 When the Buyer can end the Contract
- 11.4.1 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 and the consequences of termination in Clause 11.5.1 shall apply:
- 11.4.1.1 there's a Supplier Insolvency Event;
- 11.4.1.2 the Supplier is in Material Breach of the Contract;
- 11.4.1.3 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;
- 11.4.1.4 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;
- 11.4.1.5 the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
- 11.4.1.6 the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.
- 11.4.2 If any of the events in 73(1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and clauses 11.5.1.2 to 11.5.1.7 apply.
- 11.5 What happens if the Contract ends
- 11.5.1 Where the Buyer terminates the Contract under clause 10.13 7.7.2, 28.4.2, or in accordance with Annex 1 – Processing Personal Data (if used), all of the following apply:
- 11.5.1.1 the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;

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- 11.5.1.2 the Buyer's payment obligations under the terminated Contract stop immediately;
  - 11.5.1.3 accumulated rights of the Parties are not affected;
  - 11.5.1.4 the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
  - 11.5.1.5 the Supplier must promptly return any of the Buyer's property provided under the Contract;
  - 11.5.1.6 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; and
  - 11.5.1.7 the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- 11.6 The following clauses survive the expiry or termination of the Contract: 1, 4.2.9, 5, 7, 8.4, 10, 11.5, 12, 14, 15, 16, 18, 19, [REDACTED], 36 and 37 and any clauses which are expressly or by implication intended to continue.
- 11.7 When the Supplier can end the Contract and what happens when the contract ends (Buyer and Supplier termination)
- 11.7.1 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.
  - 11.7.2 Where the Buyer terminates the Contract in accordance with clause 11.3 or the Supplier terminates the Contract under clause 11.7 or 23.4:
    - 11.7.2.1 the Buyer must promptly pay all outstanding charges incurred by the Supplier;
    - 11.7.2.2 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; and
    - 11.7.2.3 clauses 11.5.1.2 to 11.5.1.7 apply.
  - 11.7.3 The Supplier also has the right to terminate the Contract in accordance with Clauses 20.3 and 23.4.
- 11.8 Partially ending and suspending the Contract
- 11.8.1 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.

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- 11.8.2 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.
- 11.8.3 The Parties must agree (in accordance with clause 25) any necessary variation required by clause 11.8, but the Supplier may not either:
  - 11.8.3.1 reject the variation; or
  - 11.8.3.2 increase the Charges, except where the right to partial termination is under clause 11.3.
- 11.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.8.

**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:
  - 12.2.1 any indirect losses; and/or
  - 12.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
  - 12.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 12.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 12.3.3 any liability that cannot be excluded or limited by Law.
- 12.4 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.
- 12.5 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, in connection with provision of the Deliverables:
  - 13.1.1 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier\\_Code\\_of\\_Conduct\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form. The Buyer also expects to meet this Code of Conduct;
  - 13.1.2 must comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;



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- 13.1.3 must support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
  - 13.1.4 must comply with the model contract terms contained in (a) to (m) of Annex C of the guidance to [PPN 02/23 \(Tackling Modern Slavery in Government Supply Chains\)](#),<sup>1</sup> as such clauses may be amended or updated from time to time; and
  - 13.1.5 meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>, as updated from time to time.
- 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 34.
- 14 DATA PROTECTION AND SECURITY**
- 14.1 Not applicable.
- 15 WHAT YOU MUST KEEP CONFIDENTIAL**
- 15.1 Each Party must:
- 15.1.1 keep all Confidential Information it receives confidential and secure;
  - 15.1.2 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; and
  - 15.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- 15.2.1 where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 15.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
  - 15.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 15.2.4 if the information was in the public domain at the time of the disclosure;
  - 15.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
  - 15.2.6 on a confidential basis, to its auditors or for the purposes of regulatory requirements;

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<sup>1</sup> <https://www.gov.uk/government/publications/ppn-0223-tackling-modern-slavery-in-government-supply-chains>

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- 15.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
- 15.2.8 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 shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
  - 15.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 15.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 15.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 15.4.4 where requested by Parliament; and
  - 15.4.5 under clauses 5.7 and 16.
- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Transparency Information, and Information which is exempt from disclosure by clause 16 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 endeavours to ensure that Supplier Staff do not either.

**16 WHEN YOU CAN SHARE INFORMATION**

- 16.1 To the extent that it is allowed and practical to do so and in any event within a 12 hours period from receipt, the Supplier must tell the Buyer if it receives a Request For Information.
- 16.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
  - 16.2.1 comply with any Request For Information
  - 16.2.2 if the Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.

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16.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

**17 INSURANCE**

17.1 The Supplier shall ensure it has adequate insurance cover for this Contract.

**18 INVALID PARTS OF THE CONTRACT**

18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

**19 OTHER PEOPLE'S RIGHTS IN THE CONTRACT**

19.1 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:

20.1.1 provides written notice to the other Party; and

20.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

20.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

20.3 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 and the consequences of termination in Clauses 11.5.1.2 to 11.5.1.7 shall apply.

20.4 Where a Party terminates under clause 20.3:

20.4.1 each Party must cover its own losses; and

20.4.2 clauses 11.5.1.2 to 11.5.1.7 apply.

**21 RELATIONSHIPS CREATED BY THE CONTRACT**

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

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**22 GIVING UP CONTRACT RIGHTS**

- 22.1 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, novate or in any other way dispose of the Contract or any part of it 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 23.2 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 23.2 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.

**24 SUPPLY CHAIN**

- 24.1 The Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 24.1.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 24.1.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 24.1.3 the proposed Subcontractor employs unfit persons.
- 24.2 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of all such Subcontractors at all levels of the supply chain including:
- 24.2.1 their name;
  - 24.2.2 the scope of their appointment; and
  - 24.2.3 the duration of their appointment.
- 24.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 24.4 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

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- 24.4.1 where such Sub-Contracts are entered into after the Start Date, the Supplier will ensure that they all contain provisions that; or
- 24.4.2 where such Sub-Contracts are entered into before the Start Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
- 24.4.2.1 allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- 24.4.2.2 require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- 24.4.2.3 allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.
- 24.5 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 24.5.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Buyer in writing;
- 24.5.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 11.4;
- 24.5.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- 24.5.4 the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- 24.5.5 the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Regulations.
- 24.6 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

**25 CHANGING THE CONTRACT**

- 25.1 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.

**26 HOW TO COMMUNICATE ABOUT THE CONTRACT**

- 26.1 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 at 9am on the first Working Day after sending unless an error message is received.
- 26.2 Notices to the Buyer or Supplier must be sent to their address or email address in the Order Form.
- 26.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

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**27 DEALING WITH CLAIMS**

- 27.1 If a Beneficiary becomes aware of any Claim, then it must notify the Indemnifier as soon as reasonably practical.
- 27.2 at the Indemnifier's cost the Beneficiary must:
- 27.2.1 allow the Indemnifier to control and conduct all negotiations and proceedings to do with a Claim;
  - 27.2.2 give the Indemnifier reasonable assistance with the Claim if requested; and
  - 27.2.3 not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 27.3 The Beneficiary must:
- 27.3.1 consider and defend the Claim diligently and in a way that does not damage the Beneficiary's reputation; and
  - 27.3.2 not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

**28 PREVENTING FRAUD, BRIBERY AND CORRUPTION**

- 28.1 The Supplier shall not:
- 28.1.1 commit any criminal offence referred to in 57(1) and 57(2) of the Regulations; or
  - 28.1.2 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.
- 28.2 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 28.1 and any fraud by the Supplier 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.
- 28.3 If the Supplier notifies the Buyer as required by clause 28.2, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 28.4 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 28.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- 28.4.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and



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- 28.4.2 immediately terminate the Contract and the consequences of termination in Clause 11.5.1 shall apply.

## **29 EQUALITY, DIVERSITY AND HUMAN RIGHTS**

- 29.1 The Supplier must follow all applicable employment and equality Law when they perform their obligations under the Contract, including:
- 29.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 29.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 29.2 The Supplier must use all reasonable endeavours, 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.

## **30 HEALTH AND SAFETY**

- 30.1 The Supplier must perform its obligations meeting the requirements of:
- 30.1.1 all applicable Law regarding health and safety; and
  - 30.1.2 the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 30.2 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.

## **31 ENVIRONMENT AND SUSTAINABILITY**

- 31.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:
- 31.1.1 meet, in all material respects, the requirements of all applicable Laws regarding the environment; and
  - 31.1.2 comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide, and make Supplier Staff aware of such policy.

## **32 TAX**

- 32.1 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.

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32.2 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 Contract, the Supplier must both: 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.

### 33 CONFLICT OF INTEREST

- 33.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 33.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 33.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential conflict of interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 11.5.1.2 to 11.5.1.7 shall apply.

### 34 REPORTING A BREACH OF THE CONTRACT

- 34.1 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 13.1, or clauses 27 to 33 following an internal investigation where the Supplier has decided that it may have a significant impact on the Buyer.
- 34.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 34.1 to the Buyer or a Prescribed Person.

### 35 FURTHER ASSURANCES

- 35.1 Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

### 36 RESOLVING DISPUTES

- 36.1 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 by commercial negotiation.
- 36.2 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 36.3 to 36.5.
- 36.3 Unless the Buyer refers the dispute to arbitration using clause 36.4, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.

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- 36.4 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.
- 36.5 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 36.3, 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 36.4.
- 36.6 The Supplier cannot suspend the performance of the Contract during any dispute.

**37 WHICH LAW APPLIES**

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

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**III. Annex 1 – Processing Personal Data****Part A Authorised Processing Template**

Description of authorised processing	Details
Identity of Controller and Processor / Independent Controllers / Joint Controllers for each category of Personal Data	N/A
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A
Type of Personal Data being processed	N/A
Categories of Data Subject	N/A
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	N/A
Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract and International transfers and legal gateway	N/A
Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Contract against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	N/A