**THE SECRETARY OF STATE FOR HEALTH**

**and**

**LGC LIMITED**

**CONTRACT FOR THE PROVISION OF**

**NIHR OFFICE FOR CLINICAL RESEARCH INFRASTRUCTURE (NOCRI) – LOT 3**

**(OJEU Contract Ref: 2016/S 208-376509)**

12/08/2013

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This Agreement is made on …………18th………….…… of …………May………..……………………….. 2017

**BETWEEN:**

**THE SECRETARY OF STATE FOR HEALTH** acting as part of the Crown of Richmond House, 79 Whitehall, London, SW1A 2NS (the "**Authority**");

**AND**

**LGC LIMITED**, a company registered in England and Wales with registration number 02991879 and whose administrative office is at Queens Road, Teddington, Middlesex TW11 0LY (the “**Supplier**”).

**RECITALS:**

1. The Authority placed a contract notice (OJEU reference number 2016/S 208-376509 ) on 27 October 2016 (the **"OJEU Notice"**) containing an invitation to tender (the "**Invitation to Tender**") in the Official Journal of the European Union seeking tenders from providers interested in entering into a contract for the supply of the Services to the Authority.
2. In response to the OJEU Notice and the Invitation to Tender, the Supplier submitted a request to participate to the Authority and, following assessment of the information it provided and further invitation by the Authority, an initial tender to the Authority and, following negotiations, the Supplier submitted the Tender to the Authority on 13 March 2017through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
3. On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Services to the Authority in accordance with this Contract.
4. PRELIMINARIES
5. DEFINITIONS AND INTERPRETATION
   1. In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
   2. In this Contract, unless the context otherwise requires:
      1. the singular includes the plural and vice versa;
      2. reference to a gender includes the other gender and the neuter;
      3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
      4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
      5. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
      6. references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
      7. references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings”** as references to obligations under this Contract;
      8. references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
      9. the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
   3. In the event of and only to the extent of any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
      1. the Clauses;
      2. the Schedules (except Schedule 20 (Tender));
      3. Schedule 20 (Tender).
6. DUE DILIGENCE
   1. The Supplier acknowledges that:
      1. the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
      2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
      3. it has raised all relevant due diligence questions with the Authority before the Contract Commencement Date; and
      4. it has entered into this Contract in reliance on its own due diligence alone.
   2. The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
      1. any misinterpretation of the requirements of the Authority in this Contract; and/or
      2. any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
7. REPRESENTATIONS AND WARRANTIES
   1. Each Party represents and warranties that:
      1. it has full capacity and authority to enter into and to perform this Contract;
      2. this Contract is executed by its duly authorised representative;
      3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
      4. its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
   2. The Supplier represents and warrants that:
      1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
      2. it has all necessary consents and regulatory approvals to enter into this Contract;
      3. its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
      4. as at the Contract Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation, its Tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the Contract Commencement Date;
      5. as at the Contract Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
      6. except as provided in this Contract it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier IPR and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessaryfor the performance of the Supplier’s obligations under this Contract including the receipt of the Services by the Authority;
      7. it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority’s Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
      8. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
      9. it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue; and
      10. for the Contract Period and for a period of twelve (12) Months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Authority (with the exception of staff that have responded to job advertisements in the public domain or sourced via a recruitment agency given a general job specification not specifically targeting Authority staff) which have been associated with the provision of the Services without Approval.
   3. Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
   4. If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
   5. For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.
8. GUARANTEE
   1. The Authority reserves the right to request a Guarantee from the Supplier at any time during the Contract Period where, in its sole discretion, the Authority considers it necessary for the effective performance of the Contract.
   2. Where the Authority requests a Guarantee under Clause 4.1, the Supplier shall deliver to the Authority:
      1. an executed Guarantee from a Guarantor; and
      2. a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee,

within thirty (30) days from the Authority’s request or on such other date as is agreed between the Parties.

* 1. If the Supplier fails to provide the documentation required by Clause 4.1 by the agreed date then the Authority shall be entitled to terminate this Contract in accordance with Clause 35.1.

1. DURATION OF CONTRACT
2. CONTRACT PERIOD
   1. This Contract shall, unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law, take effect on the Contract Commencement Date and shall expire either:

5.1.1 at the end of the Initial Period; or

5.1.2 where the Authority elects to extend the Initial Period in accordance with paragraph 4.4 and 4.5 of Schedule 3, at the end of the final Extension Period

5.2 The Supplier acknowledges that the Authority will undertake the Contract Extension Notice Review in accordance with paragraph 4.4 and 4.5 of Schedule 3 to determine if the Initial Period of the Contract should be extended.

1. CONTRACT PERFORMANCE
2. IMPLEMENTATION PLAN

Compliance with the Implementation Plan

* + 1. The Supplier shall:
       1. comply with the Implementation Plan; and
       2. ensure that each Milestone is Achieved on or before its Milestone Date.
    2. The Parties shall comply with the provisions of Annex 1 of Part A of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate) in relation to the agreement and maintenance of the Detailed Implementation Plan.

Rectification of Delay in Implementation

* + 1. If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract:
       1. it shall:
          1. notify the Authority as soon as practically possible and no later than within five (5) Working Days from becoming aware of the Delay or anticipated Delay; and
          2. include in its notification an explanation of the actual or anticipated impact of the Delay and proposed rectification steps; and
          3. comply with the Authority’s instructions in order to address the impact of the Delay or anticipated Delay; and
          4. use all best endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

1. SERVICES

Provision of the Services

* + 1. The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Contract.
    2. The Supplier shall ensure that the Services:
       1. comply in all respects with the Authority’s description of the Services in Schedule 2 (Services) or elsewhere in this Contract; and
       2. are supplied in accordance with the provisions of this Contract.
    3. The Supplier shall:
       1. perform its obligations under this Contract in accordance with:
          1. all applicable Law;
          2. Good Industry Practice;
          3. the Standards;
          4. the Security Policy (in Annex 1 of Schedule 8); and
          5. the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses (i) and (iv); and
       2. deliver the Services using efficient business processes and ways of working having regard to the Authority’s obligation to ensure value for money.
    4. In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 7.1.3(a)(i) and 7.1.3(a)(iv), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier Covenants

* + 1. The Supplier shall:
       1. at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
       2. obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
       3. ensure that any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Authority;
       4. the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority);
       5. the Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
       6. minimise any disruption to the Sites and/or the operations of the Authority when providing the Services;
       7. ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
       8. co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
       9. assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
       10. provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
       11. deliver the Services in a proportionate and efficient manner;
       12. ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier’s obligations under this Contract; and
       13. gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier’s compliance with its obligations under this Contract; and
       14. continue to have all necessary rights in and to the Third Party IPRs, the Supplier IPRs and any other materials made available by the Supplier (and/or any Sub‑Contractor) to the Authority which are necessaryfor the performance of the Supplier’s obligations under this Contract and/or the receipt of the Services by the Authority.
    2. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
    3. The Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

Obligation to Remedy a Default in the Supply of the Services

* + 1. Without prejudice to Clauses 27.9.2 and 27.9.3 (IPR Indemnity) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
       1. remedy any breach of its obligations in Clause 7.2 within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
       2. meet all the costs of, and incidental to, the performance of such remedial work.

Continuing Obligation to Provide the Services

* + 1. The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
       1. any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under Clause 17.3 (Contract Charges and Payments) of this Contract*;*
       2. the existence of an unresolved Dispute; and/or
       3. any failure by the Authority to pay any Contract Charges, (unless the Supplier is entitled to terminate this Contract under Clause 36.1 (Termination on Authority Cause for Failure to Pay) for failure by the Authority to pay undisputed Contract Charges).

1. TARGET PERFORMANCE LEVELS

The Supplier shall provide the Services to meet or exceed the applicable Target Performance Levels from the Contract Commencement Date.

If there is a Performance Indicator Failure or if the Supplier believes that there will be a Performance Indicator Failure, the Supplier shall notify the Authority promptly of the Performance Indicator Failure or likely Performance Indicator Failure and take all remedial action that is reasonable to rectify or to prevent the Performance Indicator Failure from taking place or recurring.

In the event of a Performance Indicator Failure Service Credits shall be applied in accordance with the provisions set out in Annex 1 of Part A of Schedule 6 (Performance Measurement and Monitoring).

Service Credits shall become a debt if not paid on or before the due date and be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice then due to be issued under this Contract. If no invoice is due to be issued then the Supplier shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 10 Working Days of issue.

Where Service Credits are applied as a remedy for Performance Indicator Failure in respect of the relevant Services it shall be the Authority’s exclusive remedy except where:

* + 1. the aggregate number of Performance Indicator Failures constitutes a Default as set out in Annex 1 Part A of Schedule 6 (Performance Measurement and Monitoring);
    2. the failure to perform the Services in accordance with the Target Performance Levels has arisen due to theft, fraud or wilful default by the Supplier;
    3. the Performance Indicator Failure results in corruption and loss of data belonging to the Authority or a breach of Data Protection Legislation; or
    4. the Authority is otherwise entitled to or does terminate this Contract pursuant to the Supplier’s Default pursuant to Clause 35.2.

1. PERFORMANCE INDICATORS AND MONITORING

The Supplier shall:

* + 1. provide the Services in such a manner so as to meet the Performance Indicators and meet or exceed any Target Performance Level in relation to each Performance Indicator as set out in Annex 1 of Part A of Schedule 6 (Performance Measurement and Monitoring); and
    2. comply with the provisions of Schedule 6 (Performance Measurement and Monitoring) and Schedule 3 (Governance) in relation to the monitoring and reporting on its performance against the Performance Indicators.

If a Performance Indicator Failure occurs, the Supplier shall comply with the Rectification Plan Process.

1. BUSINESS CONTINUITY AND DISASTER RECOVERY
   1. The Parties shall comply with the provisions of Schedule 9 (Business Continuity and Disaster Recovery).
2. DISRUPTION
   1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, their employees or any other contractor employed by the Authority.
   2. The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.
   3. In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.
   4. If the Supplier's proposals referred to in Clause 11.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.
   5. If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely caused by the Authority, an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.
3. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE
   1. Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause, the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within five (5) Working Days of the Supplier becoming aware) that an Authority Cause has occurred or is reasonably likely to occur, giving details of:
      1. the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract; and
      2. any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause;

and the Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

1. CONTINUOUS IMPROVEMENT
   1. The Supplier shall have an on-going obligation throughout the Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 13 with a view to reducing the Authority’s costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. As part of this on-going obligation the Supplier shall identify and report to the Authority at least bi-annually (March and June) in accordance with paragraph 8 of Schedule 3 (Governance) or as and when required:
      1. the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
      2. new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
      3. changes to the Sites, business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
      4. changes to the Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
   2. The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented and instruct the Supplier accordingly. The Supplier shall provide any further information that the Authority requests.
   3. If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Authority.
   4. Any improvement agreed in accordance with Clause 13.3 resulting in Cost Savings shall be dealt with in accordance with the gainshare provisions in paragraph 10 in Schedule 4 (Contract Charges, Payment and Invoicing).
   5. Cost Savings are measured and compared against the Contract Charges on a cumulative basis for each quarter within each Contract Year.
   6. Any Cost Saving shall be measurable and supported by evidence for agreement by the Authority as part of the Variation Procedure.
2. CONTRACT GOVERNANCE
3. GOVERNANCE
   1. The Parties shall comply with the provisions of Schedule 3 (Governance) in relation to the management and governance of this Contract.
4. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA
   1. The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
   2. The Supplier shall:
      1. comply with Government’s policy on Open Book Contract Management

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525283/obcm_guidance_final.pdf> and all relevant instructions of the Authority, including any future request for a Variation by the Authority in order to fully implement the said policy in this Contract;

* + 1. keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
    2. afford any Auditor access to the records and accounts referred to in Clause 15.1 at the Supplier’s premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier’s obligations under this Contract including for the following purposes to:
       1. verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract) together with compliance with the Target Performance Levels;
       2. verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
       3. verify the Open Book Data;
       4. verify the Supplier’s and each Sub-Contractor’s compliance with the applicable Law;
       5. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
       6. identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or the Guarantor and/or any Sub-Contractors or their ability to perform the Services;
       7. obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
       8. review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
       9. carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
       10. 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 Authority has used its resources;
       11. review any reports provided under Schedule 3 (Governance) and/or other records relating to the Supplier’s performance of the provision of the Services and to verify that these reflect the Supplier’s own internal reports and records;
       12. verify the accuracy and completeness of any information delivered or required by this Contract;
       13. review the Supplier’s quality management systems (including any quality manuals and procedures);
       14. review performance monitoring reports (including but not limited to any reports specified in Part B of Schedule 6 (Performance Measurement and Monitoring) and Schedule 3 (Governance)) and all other matrices, records and other information submitted and/or maintained by the Supplier in connection with its performance monitoring and measuring obligations under this Contract;
       15. review the Supplier’s compliance with the Standards;
       16. inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
       17. review the integrity, confidentiality and security of the Authority Data.
  1. The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
  2. Subject to the Supplier’s rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
     1. all reasonable information requested by the Authority within the scope of the audit;
     2. reasonable access to Sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
     3. access to the Supplier Personnel.
  3. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

1. CHANGE

Variation Procedure

* + 1. Subject to the provisions of this Clause 16 and of Schedule 4 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation**".
    2. A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
    3. The Authority may require the Supplier to carry out an impact assessment of the Variation on the Services (the “**Impact Assessment**”). The Impact Assessment shall be completed in good faith and shall include sufficient detail to enable the Authority to fully consider the impact of the proposed Variation, including:
       1. a description of the proposed services and Target Performance Levels;
       2. details of the impact of the proposed Variation on the Services, Target Performance Levels; Milestones; plans and timetables previously agreed by the Parties and on the Supplier's ability to meet its other obligations under this Contract;
       3. full visibility and breakdown of any cost of implementing the proposed Variation including any relevant supporting evidence which is reasonably necessary for the Authority to substantiate and verify the proposed costs (including any relevant Open Book Data);
       4. details of the on-going costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
       5. a timetable for the implementation, together with any proposals for the testing of the Variation; and
       6. such other information as the Authority may reasonably request in (or in response to) the Variation request or an Impact Assessment.
    4. The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
    5. The receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
    6. In the event that:
       1. the Supplier is unable to agree to or provide the Variation; and/or
       2. the Parties are unable to agree a change to the Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Authority may:

* + - * 1. agree to continue to perform its obligations under this Contract without the Variation; or
        2. terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure in Schedule 12.
    1. If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.
    2. A Party can only propose an adjustment of the Contract Charges under paragraph 1.3 of Annex 1 to Schedule 4 provided that it submits its proposed Variation to the Contract Charges to the other Party within twenty (20) Working Days of service of the Authority's Contract Extension Notice under paragraph 4.5 of Schedule 3. If the Parties cannot agree the Contract Charges to apply during the Extension Period before the expiry of the Initial Period the Authority may:
       1. require by written notice to the Supplier that the Supplier continues to perform its obligations under the Contract during the Extension Period on the basis of the Contract Charges that applied during the Initial Period pending resolution of the issue of the Contract Charges to apply during the Extension Period under the Dispute Resolution Procedure; or

(b) permit the Contract to expire naturally at the end of the Initial Period.

* 1. Legislative Change
     1. The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:
        1. General Change in Law;
        2. Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Contract Commencement Date.
     2. If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 16.2.1(b)), the Supplier shall:
        1. notify the Authority as soon as reasonably practicable of the likely effects of that change including:
           1. whether any Variation is required to the provision of the Services, the Contract Charges or this Contract; and
           2. whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
        2. provide to the Authority evidence:
           1. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
           2. as to how the Specific Change in Law has affected the cost of providing the Services; and
           3. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 13 (Continuous Improvement), has been taken into account in amending the Contract Charges.
     3. Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.2.1(b)) shall be implemented in accordance with the Variation Procedure.

1. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS
2. CONTRACT CHARGES AND PAYMENT

Contract Charges

* + 1. In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Schedule 4 (Contract Charges, Payment and Invoicing).
    2. Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 15 (Records, Audit Access and Open Book Data), 28.5 (Freedom of Information), 28.6 (Protection of Personal Data).
    3. If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

* + 1. The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
    2. The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier’s failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due from the Supplier to the Authority under this Clause 17.2 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

Retention and Set Off

* + 1. The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
    2. If the Authority wishes to exercise its right pursuant to Clause 17.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority’s reasons for retaining or setting off the relevant Contract Charges.
    3. The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

Foreign Currency

* + 1. Any requirement of Law to account for the Services in any currency other than Sterling (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.
    2. The Authority shall provide all reasonable assistance to facilitate compliance with Clause 17.4.1 by the Supplier.

Income Tax and National Insurance Contributions

* + 1. Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
       1. at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
       2. indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
    2. In the event that any one of the Supplier Personnel is a Worker, and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:
       1. that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration;
       2. that the Worker must comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
       3. that the Authority may, at any time during the Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
       4. that the Worker’s contract may be terminated at the Authority’s request if:
          1. the Worker fails to provide information requested by the Authority within the time specified by the Authority; and/or
          2. the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and
       5. that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

1. PROMOTING TAX COMPLIANCE
   1. If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
      1. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
      2. promptly provide to the Authority:
         1. details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
         2. such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
   2. In the event that the Supplier fails to comply with this Clause 18 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.
2. BENCHMARKING
   1. Notwithstanding the Supplier’s obligations under Clause 13 (Continuous Improvement), the Authority shall be entitled to benchmark the Contract Charges from the Contract Commencement Date and the level of performance by the Supplier of the supply of the Services, against other suppliers providing services substantially the same as the Services during the Contract Period. To ensure correct benchmarking it is noted that the Services are bespoke so direct comparison with suppliers of substantially the same Services may not be appropriate. Any benchmarking will be fair, transparent and objective.
   2. The Authority, acting reasonably, shall be entitled to use any transparent and objective model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 19.1 above.
   3. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking and such information requirements shall be at the discretion of the Authority.
   4. Where, as a consequence of any benchmarking carried out by the Authority, the Authority decides improvements to the Services and/or reduction of the Contract Charges should be implemented, such improvements and/or reduction of the Contract Charges shall be implemented by way of the Variation Procedure provided that such implementation will include transition and any other necessary costs (including licence fees) where such costs are reasonably incurred but such implementation will only be implemented if the overall net cost to the Authority of the affected services after the implementation will not increase.
3. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS
4. KEY PERSONNEL
   1. The Parties have agreed to the appointment of the Key Personnel in Part C of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate) which lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Contract Commencement Date.
   2. The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.
   3. The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
   4. The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 10 (Exit Management)) unless:
      1. requested to do so by the Authority;
      2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
      3. the person’s employment or contractual arrangements with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
      4. the Supplier obtains the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed).
   5. The Supplier shall:
      1. notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
      2. ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
      3. give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel’s employment contract, this will mean at least three (3) Months’ notice;
      4. ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
      5. ensure that any replacement for a Key Role:
         1. has a level of qualifications and experience appropriate to the relevant Key Role; and
         2. is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
      6. shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Contract Period without Approval.
   6. The Authority may require the Supplier to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.
5. SUPPLIER PERSONNEL

Supplier Personnel

* + 1. The Supplier shall:
       1. provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
       2. ensure that all Supplier Personnel:
          1. are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
          2. are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
          3. obey all lawful instructions and reasonable directions of the Authority and provide the Services to the reasonable satisfaction of the Authority;
       3. subject to Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
       4. be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract;
       5. use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
       6. replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
       7. bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
       8. procure that the Supplier Personnel shall vacate the Sites immediately upon the Expiry Date.
    2. If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
       1. refuse admission to the relevant person(s) to the Sites; and/or
       2. direct the Supplier to end the involvement in the provision of the Services of the relevant Supplier Personnel.
    3. The decision of the Authority as to whether any person is to be refused access to the Sites shall be final and conclusive.

Relevant Convictions

* + 1. For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
       1. carry out a check with the records held by the Department for Education (DfE);
       2. conduct thorough questioning regarding any Relevant Convictions; and
       3. ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service or its equivalent or replacement service,

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

* 1. **Employment Indemnity**
     1. The Parties agree that:
        1. The Supplier shall both during and after the Contract Period, indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
        2. The Authority shall both during and after the Contract Period, indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority’s employees, agents, consultants and contractors.

1. STAFF TRANSFER

The Parties agree that:

* 1. Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers involving the transfer of Transferring Former Supplier Employees, Part B of Schedule 11 (Staff Transfer) and the Annex (Pensions) to that Schedule shall apply.
  2. On the expiry or termination of the Services or any part of the Services Part D of Schedule 11 (Staff Transfer) shall apply.

1. SUPPLY CHAIN RIGHTS AND PROTECTION

Appointment of Sub-Contractors

* + 1. The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
       1. manage any Sub-Contractors in accordance with Good Industry Practice;
       2. comply with its obligations under this Contract in the delivery of the Services; and
       3. assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
    2. Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority and provide the Authority with:
       1. the proposed Sub-Contractor’s name, registered office and company registration number;
       2. the scope of any Services to be provided by the proposed Sub-Contractor; and
       3. where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm’s-length" terms.
    3. If requested by the Authority within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 23.1.2, the Supplier shall also provide:
       1. a copy of the proposed Sub-Contract; and
       2. any further information reasonably requested by the Authority.
    4. The Authority may, within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 23.1.2 (or, if later, receipt of any further information requested pursuant to Clause 23.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:
       1. the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under this Contract;
       2. the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
       3. the proposed Sub-Contractor employs unfit persons,
       4. the proposed Sub-Contractor should be excluded in accordance with Clause 23.6;

in which case, the Supplier shall not proceed with the proposed appointment.

* + 1. If:
       1. the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor’s appointment by the later of ten (10) Working Days of receipt of:
          1. the Supplier’s notice issued pursuant to Clause 23.1.2; and
          2. any further information requested by the Authority pursuant to Clause 23.1.3; and
       2. the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with Clause 23.2 (Appointment of Key Sub-Contractors),

the Supplier may proceed with the proposed appointment.

Appointment of Key Sub-Contractors

* + 1. The Authority has consented to the engagement of the Key Sub-Contractors listed in Schedule 16 (Key Sub-Contractors).
    2. Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority (the decision to consent or not will not be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:
       1. the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
       2. the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
       3. the proposed Key Sub-Contractor employs unfit persons; and/or
       4. the proposed Key-Sub-Contractor should be excluded in accordance with Clause 23.6.
    3. The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:
       1. the Key Sub-Contract price expressed as a percentage of the total projected Contract Charges over the Contract Period; and
       2. the credit rating of the Key Sub-Contractor as provided by Dun and Bradstreet.
    4. Except where the Authority has given its prior written consent under Clause 23.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
       1. provisions which will enable the Supplier to discharge its obligations under this Contract;
       2. a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
       3. a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
       4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Supplier;
       5. obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
          1. data protection requirements set out in Clauses 28.1 (Security Requirements), 28.2 (Protection of Authority Data) and 28.6 (Protection of Personal Data);
          2. FOIA requirements set out in Clause 28.5 (Freedom of Information);
          3. the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 7.2.1(l) (Supplier Covenants);
          4. the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
          5. the conduct of audits set out in Clause 15 (Records, Audit Access and Open Book Data);
       6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clause 35 (Authority Termination Rights), Clause 37 (Termination by Either Party) and Clause 39 (Consequences of Expiry or Termination) of this Contract;
       7. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
       8. a provision, where a provision in Schedule 11(Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.

Supply Chain Protection

* + 1. The Supplier shall ensure that all Sub-Contracts contain a provision:
       1. requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
       2. requiring that any invoice submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion;
       3. that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (b) after a reasonable period of time has passed;
       4. requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed;
       5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
       6. conferring a right to the Authority to publish the Supplier’s compliance with its obligation to pay undisputed invoices within the specified payment period.
    2. The Supplier shall:
       1. pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
       2. include within the reports required under Schedule 3 (Governance) a summary of its compliance with this Clause 23.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
    3. Notwithstanding any provision of Clauses 28.3 (Confidentiality) and 29 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-Contractor’s undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on Government websites and in the press).

Termination of Sub-Contracts

* + 1. The Authority may require the Supplier to terminate:
       1. a Sub-Contract where:
          1. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 35 (Authority Termination Rights) except Clause 35.7 (Termination Without Cause); and/or
          2. the relevant Sub-Contractor or its Affiliates embarrassed the Authority or the National Health Service (“**NHS**”) generally, or otherwise brought the Authority or the NHS generally into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Services or otherwise;
          3. the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law;
          4. the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 23.6; and
       2. a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
          1. the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
          2. the Authority has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.
  1. **Competitive Terms**
     1. If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may subject to the Variation Procedure at Clause 16 of this Contract:
        1. require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
        2. subject to Clause 23.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
     2. If the Authority exercises the option pursuant to Clause 23.4.2, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
     3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
        1. the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
        2. any reduction in the Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Exclusion of Sub-Contractors

* + 1. Where the Authority considers that there are grounds for the exclusion of a Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
       1. if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-Contractor;
       2. if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-Contractor and the Supplier shall comply with such a requirement.

Retention of Legal Obligations

* + 1. Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 23 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

1. PROPERTY MATTERS
2. NOT USED
3. AUTHORITY PROPERTY
   1. Where the Authority issues Authority Property free of charge to the Supplier such Authority Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Authority Property.
   2. The Supplier shall not in any circumstances have a lien or any other interest on the Authority Property and at all times the Supplier shall possess the Authority Property as fiduciary agent and bailee of the Authority.
   3. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Authority Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Authority Property separately and securely and ensure that it is clearly identifiable as belonging to the Authority.
   4. The Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.
   5. The Supplier shall maintain the Authority Property in good order and condition (excluding fair wear and tear) and shall use the Authority Property solely in connection with this Contract and for no other purpose without Approval.
   6. The Supplier shall ensure the security of all the Authority Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Security Policy and the Authority’s reasonable security requirements from time to time.
   7. The Supplier shall be liable for all loss of, or damage to the Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by an Authority Cause. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property.
4. SUPPLIER EQUIPMENT
   1. The Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
   2. All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.
   3. Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.
   4. The Supplier shall maintain all Supplier Equipment within the Sites in a safe, serviceable and clean condition.
   5. The Supplier shall, at the Authority's written request and subject to the Variation Procedure at Clause 16 of this Contract, at its own expense and as soon as reasonably practicable:
      1. remove from the Sites any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
      2. replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
5. INTELLECTUAL PROPERTY AND INFORMATION
6. INTELLECTUAL PROPERTY RIGHTS

General

* + 1. The Authority shall retain all Intellectual Property Rights in any guidance, know-how, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the “**IP Materials**”) furnished to or made available to the Supplier by or on behalf of the Authority during the Contract Period.
    2. All Intellectual Property Rights created by the Supplier or any employee, agent, Sub-Contractor (or by a third party on behalf) of the Supplier:
       - 1. arising in the course of providing the Services; and/or
         2. exclusively for the purpose of providing the Services,

(together the “**Created IPR**”),

shall be the property of the Authority, and the Supplier hereby waives all moral rights and assigns with full title guarantee (including by way of present assignment of future rights), all rights, title and other interest in and to the Created IPR to the Authority. The Supplier shall, without charge to the Authority, execute all documents necessary and do all such further acts as the Authority may require to give effect to this clause 27.1.2.

* + 1. Each Party shall immediately give written notice to the other of any actual, threatened or suspected infringement of any party’s Intellectual Property Rights (including the Created IPR) used in connection with the Contract of which it becomes aware.

Allocation of title to IPR

* + 1. Save as expressly granted elsewhere under this Contract:
       1. the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
          1. the Supplier IPR; and
          2. the Third Party IPR.
       2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
          1. Authority IPR;
          2. Authority Data; and
          3. Created IPR.
    2. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with Clause 27.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made). Without prejudice to the generality of the foregoing, the Supplier hereby assigns absolutely with full title guarantee, all rights, titles and other interest in and to the Created IPR in accordance with Clause 27.1.2.
    3. Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Licence granted by the Supplier: Supplier IPR

* + 1. The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use (with a right to sub-licence) the Supplier IPR for any purpose relating to the exercise of the Authority’s (or, if the Authority is a Central Government Body, any other Central Government Body’s) business or function including but not limited to the right to copy, adapt, publish, maintain and support the Supplier IPR.

Authority’s right to sub-license

* + 1. The Authority may sub-licence the rights granted to it pursuant to Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
       1. The sub-licence is on no broader terms than those granted to the Authority; and
       2. The sub-licence only authorises the third party to use the rights licenses under Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or, if the Authority is a Central Government Body, any other Central Government Body’s) business or function .

Authority’s right to assign/novate licences

* + 1. The Authority may assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) to:
       - 1. a Central Government Body; or
         2. any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
    2. Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR).
    3. If a licence granted in Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) is novated under Clause 27.5.1 or there is a change of the Authority’s status pursuant to Clause 27.5.2 (both such bodies being referred to as the **“Transferee”**), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

Third Party IPR

* + 1. The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) and Clause 27.5.1 (Authority’s right to assign/novate licences). If the Supplier cannot obtain for the Authority a licence materially in accordance with the licence terms set out in Clause 27.3.1 (Licences granted by the Supplier: Supplier IPR) and Clause 27.5.1 (Authority’s right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
       1. notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
       2. only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

Licence granted by the Authority

* + 1. The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority IPR, the Created IPR and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
       1. any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 28.3 (Confidentiality); and
       2. the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

Termination of licences

* + 1. All licences and sub-licences granted by the Supplier or third party pursuant to or as contemplated by Clauses 27.3 to 27.5 inclusive shall survive the Expiry Date.
    2. The Supplier shall, if requested by the Authority in accordance with Schedule 10 (Exit Management) and at the Supplier’s cost, grant (or procure the grant) to any Replacement Supplier of a licence to use any Supplier IPR and/or Third Party IPR on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant IPRs pursuant to or as contemplated by Clauses 27.3 to 27.5 subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
    3. All licences and sub-licences granted by the Authority pursuant to Clause 27.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:
       1. immediately cease all use of the Authority IPR, the Created IPR and the Authority Data (as the case may be);
       2. at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority IPR, Created IPR and the Authority Data, provided that if the Authority has not made an election within six Months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority IPR, Created IPR and the Authority Data (as the case may be); and
       3. ensure, so far as reasonably practicable, that any Authority IPR, Created IPR and Authority Data that are held in electronic, digital or other machine-readable form cease to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority IPR, Created IPR and/or Authority Data.

IPR Indemnity

* + 1. The Supplier shall at times during and after the Contract Period, indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim. The Authority shall enforce this indemnity by issuing a written demand to the Supplier at the relevant time.
    2. If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
       1. procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
       2. replace or modify the relevant item with non-infringing substitutes provided that:
          1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
          2. the replaced or modified item does not have an adverse effect on any other Services;
          3. there is no additional cost to the Authority; and
          4. the terms and conditions of this Contract shall apply to the replaced or modified Services.
    3. If the Supplier elects to procure a licence in accordance with Clause 27.9.2(a) or to modify or replace an item pursuant to Clause 27.9.2(b), but this has not avoided or resolved the IPR Claim, then:
       1. the Authority may terminate this Contract by written notice with immediate effect; and
       2. without prejudice to the indemnity set out in Clause 27.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

Third party software

* + 1. The Authority acknowledges that the Supplier has standard third party licence agreements with [INSERT RELEVANT DETAILS IF APPLICABLE] and the Authority agrees not to unreasonably withhold its consent to the use of such standard third party licence agreements in connection with the Services, notwithstanding the relevant agreements may not in all respects comply with Clause 27.6.1 (Third Party IPR) of the Contract but subject always to the Authority’s Approval.

1. SECURITY AND PROTECTION OF INFORMATION

Security Requirements

* + 1. The Supplier shall comply with the Security Policy and the requirements of Schedule 8 (Security) including the Security Management Plan and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
    2. The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
    3. If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be subject to the Variation Procedure.
    4. Until and/or unless a change to the Contract Charges is agreed by the Authority pursuant to the Variation Procedure, the Supplier shall continue to provide the Services in accordance with its existing obligations.

Protection of Authority Data

* + 1. The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
    2. The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise Approved by the Authority.
    3. To the extent that the Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.
    4. The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
    5. The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
    6. The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan.
    7. If at any time the Supplier suspects or has reason to believe that the Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
    8. If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Authority may:
       1. require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 9 (Business Continuity and Disaster Recovery) or as required by the Authority and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority’s notice; and/or
       2. itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 9 (Business Continuity and Disaster Recovery) or as required by the Authority.

Confidentiality

* + 1. For the purposes of this Clause 28.3, the term **“Disclosing Party”** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **“Recipient”** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
    2. Except to the extent set out in this Clause 28.3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
       1. treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
       2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
       3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Contract; and
       4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
    3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
       1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 28.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
       2. the need for such disclosure arises out of or in connection with:
          1. any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
          2. the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
          3. the conduct of a Central Government Body review in respect of this Contract; or
       3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
    4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
    5. Subject to Clauses 28.3.2 and 28.3.7, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
       1. Supplier Personnel who are directly involved in the provision of theServices and need to know the Confidential Information to enable performance of the Supplier’s obligations under this Contract; and
       2. its professional advisers for the purposes of obtaining advice in relation to this Contract.
    6. Where the Supplier discloses Confidential Information of the Authority pursuant to Clause 28.3.5, it 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.
    7. The Authority may disclose the Confidential Information of the Supplier:
       1. to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
       2. to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
       3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
       4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 28.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
       5. on a confidential basis for the purpose of the exercise of its rights under this Contract; or
       6. to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 28.3.

* + 1. Nothing in this Clause 28.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
    2. In the event that the Supplier fails to comply with Clauses 28.3.2 to 28.3.5, the Authority reserves the right to terminate this Contract for material Default.

Transparency

* + 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf> and the Transparency Principles referred to therein. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
    2. Notwithstanding any other provision of this Contract, the Supplier hereby gives his consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
    3. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

Freedom of Information

* + 1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
       1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
       2. provide the Authority with full details of all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
       3. provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request for Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
       4. not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority. The Authority shall authorise a direct response by the Supplier where not to respond directly would place the Supplier in breach of its own obligations under the FOIA and the EIR, provided the Supplier shall have due regard to any comments and directions provided by the Authority in a timely manner and act in accordance with its obligations to it under this Contract.
    2. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. The Authority shall comply with FOIA and/or the EIRs exemptions to prevent breaches of confidentiality and/or unlawful disclosure of personal data and/or Commercially Sensitive Information.

Protection of Personal Data

* + 1. Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this Contract, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.
    2. The Supplier shall:
       1. Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;
       2. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 28.1 (Security Requirements) and 28.2 (Protection of Authority Data);
       3. not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract);
       4. take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
          1. are aware of and comply with the Supplier’s duties under this Clause 28.6.2 and Clauses 28.1 (Security Requirements), 28.2 (Protection of Authority Data) and 28.3 (Confidentiality);
          2. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
          3. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
       5. notify the Authority within five (5) Working Days if it receives:
          1. from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
          2. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
          3. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
       6. provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 28.6.2(e)), including by promptly providing:
          1. the Authority with full details and copies of the complaint, communication or request;
          2. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
          3. the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
       7. if requested by the Authority, provide a written description of the measures that have been taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 28.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
    3. The Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Contract Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:
       1. the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with the Variation Procedure and Clauses 28.6.3(b) to 28.6.3(d);
       2. the Supplier shall set out in its proposal to the Authority for a Variation details of the following:
          1. the Personal Data which will be transferred to and/or Processed in or to any Restricted Country;
          2. the Restricted Country or Countries to which the Personal Data will be transferred to and/or Processed in; and
          3. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
       3. how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority’s compliance with the DPA;
       4. in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
       5. the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
          1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing agreement between the Parties; and
          2. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer,

and in each case the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

* + 1. The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority’s obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

1. PUBLICITY AND BRANDING
   1. The Supplier shall not:
      1. make any press announcements or publicise this Contract in any way; or
      2. use the Authority's name or brand in any promotion or marketing or announcement of work orders and/or Services,

without Approval.

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

1. LIABILITY AND INSURANCE
2. LIABILITY

Unlimited Liability

* + 1. Neither Party excludes or limits it liability for:
       1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
       2. bribery or Fraud by it or its employees;
       3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
       4. any liability to the extent it cannot be excluded or limited by Law.
    2. The Supplier’s liability in respect of the indemnities in Clause 21.3 (Employment Indemnity), Clause 17.5.1 (Income Tax and National Insurance Contributions), Schedule 11 (Staff Transfer) and the Annexes to Schedule 11 (Staff Transfer) shall be unlimited.
    3. The Authority’s liability in respect of the indemnities in Clause 21.3 (Employment Indemnity), Schedule 11 (Staff Transfer) and the Annexes to Schedule 11 (Staff Transfer) shall be unlimited.

Financial Limits

* + 1. Subject to Clause 30.1 (Unlimited Liability), the Supplier’s total aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
       1. in relation to Defaults occurring in the first Contract Year, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred per cent (100%) of Contract Charges paid and/or due to be paid to the Supplier under this Contract in the first Contract Year;
       2. in relation to Defaults occurring during any subsequent Contract Year, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred per cent (100%) of Contract Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default;
       3. in relation to Defaults occurring after the end of the Contract Period, the higher of ten million pounds (£10,000,000) or a sum equal to one hundred per cent (100%) of Contract Charges paid and/or due to be paid to the Supplier in the 12 Month period immediately prior to the last day of the Contract Period.
    2. Subject to Clause 30.1 (Unlimited Liability) and 30.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses incurred by the Supplier during the Contract Period as a result of Authority Causes shall be limited to one million pounds (£1,000,000).

Non-recoverable Losses

* + 1. Subject to Clause 30.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:
       1. indirect, special or consequential Loss;
       2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

Recoverable Losses

* + 1. Subject to Clause 30.2.1 (Financial Limits), and notwithstanding Clause 30.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
       1. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
       2. any wasted expenditure or charges;
       3. the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
       4. any compensation or interest paid to a third party by the Authority; and
       5. any fine, penalty or costs incurred by the Authority pursuant to Law.

Miscellaneous

* + 1. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
    2. For the avoidance of doubt the organisations comprising the Supplier shall be jointly and severally liable with regard to the performance by the Supplier of any and all of its obligations under the Contract and in respect of any Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier.

1. INSURANCE
   1. The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 15 (Insurance Requirements).
   2. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.
2. REMEDIES AND RELIEF
3. AUTHORITY REMEDIES FOR DEFAULT

Remedies

* + 1. Without prejudice to any other right or remedy of the Authority howsoever arising, if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been Delivered) do any of the following:
       1. at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
       2. instruct the Supplier to comply with the Rectification Plan Process; or
       3. step-in to itself supply or procure a third party to supply (in whole or in part) the Services.
    2. Where the Authority exercises any of its step-in rights under Clause 32.1.1(c), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

Rectification Plan Process

* + 1. Where the Authority has instructed the Supplier to comply with the Rectification Plan Process:
       1. the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within five (5) Working Days (or such other period as may be agreed between the Parties) from the date of Authority’s instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority’s request for a draft Rectification Plan or that that Default has occurred.
       2. the draft Rectification Plan shall set out:
          1. full details of the Default that has occurred, including a root cause analysis;
          2. the actual or anticipated effect of the Default; and
          3. the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
    2. The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Schedule 12 (Dispute Resolution Procedure).
    3. The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
       1. is insufficiently detailed to be capable of proper evaluation;
       2. will take too long to complete;
       3. will not prevent reoccurrence of the Default; and/or
       4. will rectify the Default but in a manner which is unacceptable to the Authority.
    4. The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority’s notice rejecting the first draft.
    5. If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

1. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE
   1. If the Supplier has failed to:
      1. Achieve a Milestone by its Milestone Date;
      2. provide the Services in accordance with the Target Performance Levels; or
      3. comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 12 (Supplier Notification of Authority Cause)):

* + - 1. the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
      2. the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 35 (Authority Termination Rights) except Clause 35.7 (Termination Without Cause);
      3. where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
         1. the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
         2. if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause.
  1. In order to claim any of the rights and/or relief referred to in Clause 33.1, the Supplier shall:
     1. comply with its obligations under Clause 12 (Supplier Notification of Authority Cause); and
     2. within ten (10) Working Days of becoming aware that an Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:
        1. the Supplier Non-Performance;
        2. the Authority Cause and its effect on the Supplier’s ability to meet its obligations under this Contract; and
        3. the relief claimed by the Supplier.
  2. Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.
  3. Without prejudice to Clause 7.4 (Continuing obligation to provide the Services), if a Dispute arises as to:
     1. whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
     2. the nature and/or extent of the relief claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

* 1. Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this Clause 33 shall be implemented in accordance with the Variation Procedure.

1. FORCE MAJEURE
   1. Subject to the remainder of this Clause 34 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 10 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 34 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
   2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
   3. If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 34 to the extent that consequences of the relevant Force Majeure Event:
      1. are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
      2. should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
   4. Subject to Clause 34.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
   5. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
   6. Where, as a result of a Force Majeure Event:
      1. an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
         1. the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
         2. the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
      2. the Supplier fails to perform its obligations in accordance with this Contract:
         1. the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 32.1.1(b) as a result of such failure; and
         2. the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
   7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
   8. Relief from liability for the Affected Party under this Clause 34 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 34.7.
2. TERMINATION AND EXIT MANAGEMENT
3. AUTHORITY TERMINATION RIGHTS

Termination in Relation to Guarantee

* + 1. If the Supplier has provided a Guarantee in relation to this Contract, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
       1. the Guarantor withdraws the Guarantee for any reason whatsoever and the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority;
       2. the Guarantor is in breach or anticipatory breach of the Guarantee and the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority;
       3. an Insolvency Event occurs in respect of the Guarantor and the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority;
       4. the Guarantee becomes invalid or unenforceable for any reason whatsoever and the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority;
       5. the Supplier fails to provide the Guarantee and accompanying documentation required by Clause 4 (Guarantee).

Termination on Material Default

* + 1. The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
       1. The Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice under the European Union under Article 258 of the Treaty on the Functioning of the EU;
       2. the representation and warranty given by the Supplier pursuant to Clause 3.2.5  (Representations and Warranties) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
       3. as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier’s aggregate annual liability limit for that Contract Year as set out in Clause 30.2.1;
       4. the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses:
          1. 11.4 (Disruption);
          2. 15.5 (Records, Audit Access and Open Book Data);
          3. 18 (Promoting Tax Compliance);
          4. 28.3.9 (Confidentiality); and
          5. 44.6.2 (Prevention of Fraud and Bribery).
       5. the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
       6. the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but the Supplier has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;

and this Contract shall terminate on the date specified in the Termination Notice.

* + 1. For the purpose of Clause 35.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

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Termination in Relation to Financial Standing

* + 1. The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the organisations comprising the Supplier which:
       1. adversely impacts on the Supplier's ability to supply the Services under this Contract; or
       2. could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

and this Contract shall terminate on the date specified in the Termination Notice.

Termination on Insolvency

* + 1. The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting either of the organisations comprising the Supplier occurs and this Contract shall immediately terminate on the date specified in the Termination Notice.

Termination on Change of Control

* + 1. The Supplier shall notify the Authority immediately if any of the organisations comprising the Supplier are intending to undergo, undergoes or have undergone a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place.
    2. The Authority may terminate this Contract immediately by issuing a Termination Notice to the Supplier within six (6) Months of:
       1. being notified in writing that a Change of Control is planned or in contemplation or has occurred; or
       2. where no notification has been made, the date that the Authority becomes aware that a Change of Control is planned or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination Without Cause

* + 1. The Authority may terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least six (6) Months’ written notice. Such notice cannot be served before the end of the first anniversary of the Contract Commencement Date.

Termination on breach of Law

* + 1. The Authority may terminate this Contract at any time by issuing a Termination Notice to the Supplier:
       1. where the Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty of the Functioning of the EU; or
       2. if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure.

and this Contract shall terminate on the date specified in the Termination Notice.

Termination in Relation to Variation

* + 1. If a Variation is not agreed in accordance with the Variation Procedure in Clause 16 the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure in Schedule 12. If the Variation in dispute is not agreed or implemented as agreed following conclusion of the Dispute Resolution Procedure then the Authority may terminate this Contract immediately.

1. SUPPLIER TERMINATION RIGHTS

Termination on Authority Cause for Failure to Pay

* + 1. The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds a sum equal to one (1) Month’s average Contract Charges (such average to be calculated at the time of issue of the Termination Notice) and such amount remains outstanding ninety (90) Working Days after the receipt by the Authority of a written notice of non-payment from the Supplier specifying:
       1. the Authority’s failure to pay;
       2. the correct overdue and undisputed sum;
       3. the reasons why the undisputed sum is due;
       4. the requirement on the Authority to remedy the failure to pay; and,
       5. a warning to the Authority that failure to pay may trigger the Supplier’s right to terminate the Contract under this Clause 36.1,

this Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this Contract including Clause 17.3 (Retention and Set off).

1. TERMINATION BY EITHER PARTY

Termination for continuing Force Majeure Event

* + 1. Either Party may terminate this Contract by issuing a Termination Notice to the other, if pursuant to Clause 34.6.1(a) (Force Majeure), a Force Majeure Event endures for a continuous period of more than ninety (90) days and this Contract shall terminate on the date specified in the Termination Notice.

1. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION
   1. Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority’s reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
   2. Any suspension of this Contract under Clause 38.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
   3. The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Contract Charges, provided that the Supplier shall not be entitled to:
      1. an increase in the Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority’s termination rights under Clause 35 (Authority Termination Rights) except Clause 35.7 (Termination Without Cause); and
      2. reject the Variation.
2. CONSEQUENCES OF EXPIRY OR TERMINATION

Consequences of termination under Clauses 35.1 (Termination in Relation to Guarantee), 35.2 (Termination on Material Default), 35.4 (Termination in Relation to Financial Standing), 35.6 (Termination on Change of Control) and 35.9 (Termination in Relation to Variation)

* + 1. Where the Authority:
       1. terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 39.1; and
       2. then makes other arrangements for the supply of the Services,

the Authority may recover from the Supplier the costs reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that the Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

* + 1. For the avoidance of doubt, termination (in part or in whole) of this Contract by the Authority pursuant to the Clauses referred to in Clause 39.1, or the expiry of the Contract Period shall not result in any liability and/or payment of any penalty by the Authority to the Supplier. The only payment that the Authority shall be required to make to the Supplier as a result of such termination or expiry shall be any unpaid and undisputed Contract Charges for Services received by the Supplier up to the Expiry Date.
    2. Following the service of a Termination Notice under Clause 35.2 the Supplier shall continue to be under an obligation to provide the Services to the required Target Performance Levels and to ensure that there is no degradation in the standards of the Services until the date of termination.

Consequences of termination under Clauses 35.7 (Termination without Cause), and 36.1 (Termination on Authority Cause for Failure to Pay)

* + 1. Subject to Clause 39.2.2, where:
       1. the Authority terminates (in whole or in part) this Contract under Clause 35.7 (Termination without Cause), the Supplier may recover from the Authority any costs that it reasonably and properly incurs in winding down and concluding the provision of the Services; or
       2. the Supplier terminates this Contract pursuant to Clause 36.1 (Termination on Authority Cause for Failure to Pay), the Authority shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract,

in each case provided that the Supplier:

* + - * 1. takes all reasonable steps to mitigate such costs or Losses;
        2. submits to the Authority a fully itemised and costed list of such costs or Losses claimed together with supporting evidence as to expenditure and quantum of such costs and Losses (including such evidence as the Authority may require).
    1. The Authority shall not be liable under Clause 39.2.1 to pay any sum which:
       1. was claimable under Insurances held by the Supplier, and the Supplier has failed to make a claim on its Insurances, or has failed to make a claim in accordance with the procedural requirements of the Insurance policy;
       2. would have been claimable under insurance but for the Supplier’s failure to comply with its obligation to insure under Clause 31 (Insurance); or
       3. when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated.

Consequences of termination for Any Reason

* + 1. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated or partially terminated:
       1. by either Party for a continuing Force Majeure Event pursuant to Clause 37.1 (Termination for Continuing Force Majeure Event); or
       2. by the Authority pursuant to Clause 35.5 (Termination on Insolvency).
    2. The costs of termination incurred by the Parties shall lie where they fall if the Authority terminates this Contract under Clause 35.8 (Termination on Breach of Law).
    3. Save as otherwise expressly provided in this Contract:
       1. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
       2. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 15 (Records, Audit Access & Open Book Data), 27 (Intellectual Property Rights), 28.3 (Confidentiality), 28.5 (Freedom of Information) 28.6 (Protection of Personal Data), 30 (Liability), 39 (Consequences of Expiry or Termination), 45 (Severance), 47 (Entire Agreement), 48 (Third Party Rights) 50 (Dispute Resolution) and 0 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 4 (Contract Charges, Payment and Invoicing), Schedule 10 (Exit Management), Schedule 11 (Staff Transfer), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

Exit Management

* + 1. The Parties shall comply with the exit management provisions set out in Schedule 10 (Exit Management).

1. MISCELLANEOUS AND GOVERNING LAW
2. COMPLIANCE

Health and Safety

* + 1. The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with
       1. all applicable Law regarding health and safety; and
       2. the Authority’s health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.
    2. Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract.

Equality and Diversity

* + 1. The Supplier shall:
       1. perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with:
          1. all applicable equality Law (without limitation whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
          2. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
       2. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

* + 1. The Supplier shall comply with the provisions of:
       1. the Official Secrets Acts 1911 to 1989; and
       2. section 182 of the Finance Act 1989.

Environmental Requirements

* + 1. The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority.
    2. The Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier’s written request.

1. ASSIGNMENT AND NOVATION
   1. The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
   2. The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:
      1. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
      2. any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority’s request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 41.2.

* 1. A change in the legal status of the Authority shall not, subject to Clause 41.4, affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
  2. If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with Clause 41.2.2 (the “**Transferee**” in the rest of this Clause) the right of termination of the Authority in Clause 35.5 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in Clause 35.5 (Termination on Insolvency) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee.

1. WAIVER AND CUMULATIVE REMEDIES
   1. The rights and remedies under this Contract may be waived only by notice in accordance with Clause 49 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
   2. Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
2. RELATIONSHIP OF THE PARTIES
   1. Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
3. PREVENTION OF FRAUD AND BRIBERY
   1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Contract Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Supplier shall not during the Contract Period:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Authority or any of the Authority’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Supplier shall during the Contract Period:
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. keep appropriate records of its compliance with its obligations under Clause 44.3.1 and make such records available to the Authority on request;
      3. if so required by the Authority, within twenty (20) Working Days of the Contract Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
      4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
   4. The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 44.1, or has reason to believe that it has or any of the Supplier Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
   5. If the Supplier makes a notification to the Authority pursuant to Clause 44.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 15 (Records, Audit Access and Open Book Data).
   6. If the Supplier breaches Clause 44.3, the Authority may by notice:
      1. require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier’s breach; or
      2. immediately terminate this Contract for material Default.
   7. Any notice served by the Authority under Clause 44.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).
4. SEVERANCE
   1. If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
   2. In the event that any deemed deletion under Clause 45.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
   3. If the Parties are unable to resolve the Dispute arising under this Clause 45 within twenty (20) Working Days of the date of the notice given pursuant to Clause 45.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 45.
5. FURTHER ASSURANCES
   1. Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.
6. ENTIRE AGREEMENT
   1. This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
   3. Nothing in this Clause 47 shall exclude any liability in respect of misrepresentations made fraudulently.
7. THIRD PARTY RIGHTS
   1. The provisions of paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 1.4, 2.3 and 2.8 of Part D and the Annex (Pensions) to Schedule 11 (Staff Transfer) and the provisions of paragraph 9.6 of Schedule 10 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
   2. Subject to Clause 48.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
   3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
   4. Any amendments or modifications to this Contract may be made, and any rights created under Clause 48.1  may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
8. NOTICES
   1. Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of this Clause 49, an e-mail is accepted as being "in writing".
   2. Subject to Clause 49.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of Service |
| Email (Subject to Clauses 49.3 and 49.4) | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm) | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

* 1. The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 49.2:
     1. any Termination Notice (Clause 35 (Authority Termination Rights)),
     2. any notice in respect of:
        1. partial termination, suspension or partial suspension (Clause 38 (Partial Termination, Suspension and Partial Suspension)),
        2. waiver (Clause 42 (Waiver and Cumulative Remedies))
        3. Default or Authority Cause; and
        4. any Dispute Notice.
  2. Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 49.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 49.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
  3. This Clause 49 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
  4. For the purposes of this Clause 49, the address and email address of each Party shall be
     1. For the Authority:

Address:

Head of Research Contracting

Science, Research and Evidence Directorate

Department of Health

Room 132

Quarry House

Quarry Hill

Leeds

LS2 7UE

*Information redacted in line with section 40 of the FOIA*

* + 1. For the Supplier:

Address:

LGC Limited

Queens Road

Teddington

Middlesex

TW11 0LY

*Information redacted in line with section 40 of the FOIA*

1. DISPUTE RESOLUTION
   1. The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure in Appendix 12 (Dispute Resolution Procedure).
   2. The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

1. GOVERNING LAW AND JURISDICTION
   1. This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
   2. Subject to Clause 50 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure) (including the Authority’s right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

12/08/2013

**IN WITNESS** of which this Contract has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: ……………………………………………….

Name: ……………………………………………….

Position: ……………………………………………….

Date ……………………………………………….

Signed for and on behalf of the AUTHORITY

Signature: ……………………………………………….

Name: ……………………………………………….

Position: ……………………………………………….

Date ……………………………………………….

SCHEDULE 1: DEFINITIONS

In accordance with Clause 1 (Definitions and Interpretations) of this Contract including its recitals the following expressions shall have the following meanings:

|  |  |  |
| --- | --- | --- |
| "Achieve" | means in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone;   1. and "**Achieved**", "**Achieving**" and "**Achievement**" shall be construed accordingly; | |
| “Accountable Officer” | 1. has the meaning given to it in Schedule 3 (Governance); | |
| "Acquired Rights Directive" | 1. means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; | |
| "Affected Party" | 1. means the party seeking to claim relief in respect of a Force Majeure; | |
| "Affiliates" | 1. means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; | |
| "Approval" | 1. means the written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly; | |
| “ATP Milestone” | 1. means the Milestone linked to Authority to Proceed for the Services set out in the Implementation Plan; | |
| "Auditor" | 1. means:    1. the Authority’s internal and external auditors;    2. the Authority’s statutory or regulatory auditors;    3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;    4. HM Treasury or the Cabinet Office;    5. any party formally appointed by the Authority to carry out audit or similar review functions; and    6. successors or assigns of any of the above; | |
| "Authority Assets" | 1. means the Authority’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services; | |
| "Authority Cause" | 1. means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Supplier; | |
| "Authority Data" | 1. means:    1. 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 Authority’s Confidential Information, and which:       1. are supplied to the Supplier by or on behalf of the Authority; or       2. the Supplier is required to generate, process, store or transmit pursuant to this Contract; or    2. any Personal Data for which the Authority is the Data Controller; | |
| "Authority IPR" | 1. means:    1. IPRs owned by the Authority before the Contract Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes, software and procedures including the IPRs in the IP Materials;    2. IPRs created by the Authority independently of this Contract; and/or    3. Crown Copyright which is not available to the Supplier otherwise than under this Contract; | |
| "Authority Premises" | 1. means premises owned, controlled or occupied by the Authority; | |
| "Authority Property" | 1. means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Contract; | |
| "Authority Representative" | 1. means the representative appointed by the Authority from time to time in relation to this Contract; | |
| "Authority Responsibilities" | 1. means the responsibilities of the Authority set out in the Part B of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate) and any other responsibilities of the Authority agreed in writing between the Parties from time to time in connection with this Contract; | |
| “Authority to Proceed” or “ATP” | 1. means the authorisation to the Supplier to commence the provision of the Services to the Authority, provided by the Authority in the form of a Satisfaction Certificate in respect of the ATP Milestone; | |
| "Authority's Confidential Information" | 1. means:    1. all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority IPR); and    2. any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority’s attention or into the Authority’s possession in connection with this Contract; and 2. information derived from any of the above; | |
| "BCDR Plan" | 1. means the Supplier’s plan relating to business continuity and disaster recovery as referred to in Clause 10 (Business Continuity and Disaster Recovery) and Schedule 9 (Business Continuity and Disaster Recovery); | |
| "BCDR Services | 1. means the Business Continuity Services and Disaster Recovery Services as defined in Schedule 9 (Business Continuity and Disaster Recovery); | |
| "Central Government Body" | 1. 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:    1. Government Department;    2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);    3. Non-Ministerial Department; or    4. Executive Agency; | |
| "Change in Law" | 1. means any change in Law which impacts on the supply of the Services and performance of the Contract which comes into force after the Contract Commencement Date; | |
| "Change of Control" | 1. means where a third party exercises, is able to exercise or is entitled to acquire direct or indirect control over the affairs of any of the organisations comprising the Supplier; | |
| "Commercially Sensitive Information" | 1. means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to: 2. (a) the pricing of the Services; 3. (b) the details of the Supplier IPR; and 4. (c) the Supplier’s business and investment plans 5. which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; | |
| "Comparable Supply" | 1. means the supply of Services to another customer of the Supplier that are the same or similar to the Services; | |
| "Confidential Information" | 1. means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies; | |
| "Contract" | 1. means this agreement between the Authority acting as part of the Crown and the Supplier, including its schedules, appendices and/or annexes; | |
| "Contract Charges" | 1. means the amounts (inclusive of any Milestone Payments and exclusive of any applicable VAT) payable to the Supplier by the Authority under this Contract, as set out in Annex 1 of Schedule 4 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract; | |
| "Contract Commencement Date" | 1. means 1 April 2018; | |
| “Contract Extension Notice” | 1. means the Authority’s notice to extend the Initial Period of the Contract in accordance with the Contract Extension Notice Review | |
| “Contract Extension Notice Review” | 1. has the meaning given to it in paragraph 4.4 of Schedule 3 (Governance) | |
| “Contract Management Board” | 1. has the meaning given to it in Schedule 3 (Governance); | |
| “Contract Managers” | 1. has the meaning given to it in Schedule 3 (Governance); | |
| "Contract Period" | 1. means the term of this Contract from the Contract Commencement Date until the Expiry Date; | |
| “Contract Year" | 1. means:    1. a period of 12 Months commencing on the Contract Commencement Date; or    2. thereafter a period of 12 Months commencing on each anniversary of the Contract Commencement Date; 2. provided that the final Contract Year shall end on the Expiry Date; | |
| "Control" | 1. means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly; | |
| "Conviction" | 1. means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006; | |
| “Cost Saving” | 1. means any cost saving identified in accordance with Clause 13 (Continuous Improvement) and dealt with in accordance with the gainshare provisions in paragraph 10 of Schedule 4 (Contract Charges, Payment and Invoicing); | |
| "Costs" | 1. the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:    1. the cost to the Supplier or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:       1. base salary paid to the Supplier Personnel;       2. employer’s national insurance contributions;       3. Pension Contributions;       4. car allowances;       5. any other contractual employment benefits;       6. staff training;       7. work place accommodation;       8. work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and       9. reasonable recruitment costs, as agreed with the Authority;    2. costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;    3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;    4. Reimbursable Expenses to the extent these are incurred in delivering any Services where the Contract Charges for those Services are properly chargeable to the Authority in accordance with Schedule 4 (Contract Charges, Payment and Invoicing); 2. but excluding:    * 1. Overhead;      2. financing or similar costs;      3. maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;      4. taxation;      5. fines and penalties;      6. amounts payable under Clause 19 (Benchmarking); and      7. non-cash items (including depreciation, amortisation, impairments and movements in provisions); | |
| "Crown" | 1. means the Government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), 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; | |
| "Crown Body" | 1. means any department, office or executive agency of the Crown; | |
| "CRTPA" | 1. means the Contracts (Rights of Third Parties) Act 1999; | |
| "Data Controller" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time; | |
| "Data Processor" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time; | |
| "Data Protection Legislation" or “DPA” | 1. means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; | |
| "Data Subject" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time; | |
| "Data Subject Access Request" | 1. means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data; | |
| "Default" | 1. means any breach of the obligations of the Supplier (including but not limited to abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority; | |
| "Delay" | 1. means:    1. a delay in the Achievement of a Milestone by its Milestone Date; or    2. a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; | |
| "Deliverable" | 1. means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Contract; | |
| "Delivery" | 1. means the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Authority of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Contract and accepted by the Authority and "**Deliver**" and "**Delivered**" shall be construed accordingly; | |
| “Detailed Implementation Plan” | 1. the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Part A of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate); | |
| "Disclosing Party" | 1. has the meaning given to it in Clause 28.3.1 (Confidentiality); | |
| "Dispute" | 1. means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; | |
| "Dispute Notice" | 1. means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; | |
| "Dispute Resolution Procedure" | 1. means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure); | |
| "Documentation" | 1. means all documentation as:    1. is required to be supplied by the Supplier to the Authority under this Contract;    2. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;    3. is required by the Supplier in order to provide the Services; and/or    4. has been or shall be generated for the purpose of providing the Services; | |
| "DOTAS" | 1. means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992; | |
| "Due Diligence Information" | 1. means any information supplied to the Supplier by or on behalf of the Authority prior to the Contract Commencement Date; | |
| "Employee Liabilities" | 1. means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;    2. unfair, wrongful or constructive dismissal compensation;    3. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay;    4. compensation for less favourable treatment of part-time workers or fixed term employees;    5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;    6. claims whether in tort, contract or statute or otherwise;    7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; | |
| "Employment Regulations" | 1. means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive; | |
| "Environmental Information Regulations or EIRs" | 1. means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; | |
| "Environmental Policy" | 1. means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority; | |
| “Exit Plan” | 1. the plan produced and updated by the Supplier during the Contract Period in accordance with Paragraph 5 of Schedule 10 (Exit Management) | |
| "Expedited Dispute Timetable" | 1. means the timetable set out in paragraph 2.6 of Schedule 12 (Dispute Resolution Procedure); | |
| "Expiry Date" | 1. means:    1. the end of the Initial Period; or    2. if this Contract has been extended in accordance with paragraph 4.4 and 4.5 of Schedule 3 (Governance), the end date of any Extension Period; or    3. if this Contract is terminated before the end date of the Initial Period or Extension Period (as the case may be), the earlier date of termination of this Contract in accordance with its terms; | |
| “Extension Period” | 1. means the period of any optional extension to the Initial Period made by the Authority in accordance with paragraph 4.4 and 4.5 of Schedule 3 (Governance); | |
| “Financial Year” | 1. means a 12 Month period commencing on 1 April and ending on 31 March (inclusive) during the Contract Period; | |
| "FOIA" | 1. means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; | |
| "Force Majeure Event" | 1. means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:    1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;    2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;    3. acts of the Crown, local government or Regulatory Bodies;    4. fire, flood or any disaster; and    5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:       1. any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and       2. 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       3. any failure of delay caused by a lack of funds; | |
| "Force Majeure Notice" | 1. means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; | |
| "Former Supplier" | 1. means a supplier supplying the services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor); | |
| "Fraud" | 1. means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery; | |
| "General Anti-Abuse Rule" | 1. means (a) the legislation in Part 5 of the Finance Act 2013 and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; | |
| "General Change in Law" | 1. means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; | |
| "Good Industry Practice" | 1. means 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; | |
| "Government" | 1. means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; | |
| "Guarantee" | 1. means a deed of guarantee in favour of the Authority in the form set out in Schedule 17 (Guarantee) granted pursuant to Clause 4; | |
| "Guarantor" | 1. means the person acceptable to the Authority to give a Guarantee; | |
| "Halifax Abuse Principle" | 1. means the principle explained in the CJEU Case C-255/02 Halifax and others; | |
| "HMRC" | 1. means Her Majesty’s Revenue and Customs; | |
| "Impact Assessment" | 1. has the meaning given to it in Clause 16.1.3 (Variation Procedure); | |
| "Implementation Plan" | 1. the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Part A of Schedule 5) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Part A of Schedule 5 from time to time; | |
| "Information" | 1. has the meaning given to it under section 84 of the Freedom of Information Act 2000; | |
| “Initial Period” | 1. means the period from the Contract Commencement Date until and including 31 March 2023; | |
| "Insolvency Event" | 1. means, in respect of either of the organisations comprising the Supplier, where either party is unable to pay its debts as they become due. | |
| “Insurances” | 1. shall have the meaning given to it in Paragraph 1.1 of Schedule 15 (Insurances); | |
| "Intellectual Property Rights" or "IPR" | 1. means    1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;    2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and    3. all other rights having equivalent or similar effect in any country or jurisdiction; | |
| "IPR Claim" | 1. means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract; | |
| "Key Personnel" | 1. means the individuals (if any) identified as such in Part C of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate); | |
| "Key Role(s)" | 1. has the meaning given to it in Clause 20.1 (Key Personnel); | |
| "Key Sub-Contract" | 1. means each Sub-Contract with a Key Sub-Contractor | |
| "Key Sub-Contractor" | 1. means any Sub-Contractor:    1. listed in Schedule 16 (Key Sub-Contractors); or    2. which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; or    3. with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Charges forecast to be payable under this Contract; | |
| "Know-How" | 1. means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party’s possession before the Contract Commencement Date; | |
| "Law" | 1. means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply; | |
| "Losses" | 1. means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and “**Loss**” shall be interpreted accordingly; | |
| "Man Day" | 1. means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; | |
| "Man Hours" | 1. means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; | |
| "Milestone" | 1. means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date; | |
| "Milestone Date" | 1. means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved; | |
| "Milestone Payment" | 1. means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone; | |
| "Month" | 1. means a calendar month and "**Monthly**" shall be interpreted accordingly; | |
| “NIHR” | 1. means the National Institute for Health Research; | |
| "Occasion of Tax Non-Compliance" | 1. means:    1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:       1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;       2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or    2. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Commencement Date or to a civil penalty for fraud or evasion; | |
| "Open Book Data" | 1. means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:    1. the Supplier’s Costs broken down against each goods and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs);    2. operating expenditure relating to the provision of the Services including an analysis showing:       1. the unit costs and quantity of goods and any other consumables and bought-in services;       2. manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;       3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s profit margin; and       4. Reimbursable Expenses;    3. Overheads;    4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;    5. the Supplier Profit achieved over the Contract Period and on an annual basis;    6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;    7. an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and    8. the actual Costs profile. | |
| "Other Supplier" | 1. means any supplier (or its sub-contractors) to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware; | |
| "Outline Implementation Plan" | 1. means the outline plan set out at Annex 1 of Part A of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel and Satisfaction Certificate); | |
| "Overhead" | 1. means those amounts which are intended to recover a proportion of the Supplier’s or the relevant Sub-Contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”; | |
| "Party" | | 1. means the Authority or the Supplier and "**Parties**" shall mean both of them; | |
| “Pension Contributions” | | means employer pension contributions and such other costs incurred by the Supplier which have been agreed by the Authority in writing to constitute “Pension Contributions”; | |
| “Performance Indicator” | | 1. means the performance indicators set out in Annex 1 to Part A of Schedule 6 (Performance Measurement and Monitoring); | |
| “Performance Indicator Failure” | | 1. means a failure to meet the Target Performance Level in respect of a Performance Indicator; | |
| "Personal Data" | | 1. has the meaning given to it in the Data Protection Act 1998; | |
| "Processing" | | 1. has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "**Process**" and "**Processed**" shall be interpreted accordingly; | |
| "Prohibited Act" | | 1. means any of the following:    1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to:       1. induce that person to perform improperly a relevant function or activity; or       2. reward that person for improper performance of a relevant function or activity;    2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;    3. committing any offence:       1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);       2. under legislation or common law concerning fraudulent acts; or       3. defrauding, attempting to defraud or conspiring to defraud the Authority; or       4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; | |
| "Recipient" | | 1. has the meaning given to it in Clause 28.3.1 (Confidentiality); | |
| "Rectification Plan" | | 1. means the rectification plan pursuant to the Rectification Plan Process; | |
| "Rectification Plan Process" | | 1. means the process set out in Clause 32.2 (Rectification Plan Process); | |
| "Registers" | | 1. has the meaning given to in Schedule 10 (Exit Management); | |
| "Regulations" | | 1. means the Public Contracts Regulations 2015 as amended from time to time; | |
| “Reimbursable Expenses” | | 1. has the meaning given to it in Schedule 4 (Contract Charges, Payment and Invoicing); | |
| "Related Supplier" | | 1. means any person who provides services to the Authority which are related to the Services from time to time; | |
| "Relevant Conviction" | | 1. means:    1. a Conviction that is relevant to the nature of the Services to be provided; or    2. a conviction designated as such specified elsewhere in this Contract; | |
| "Relevant Requirements" | | 1. means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; | |
| "Relevant Tax Authority" | | 1. means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established; | |
| "Relevant Transfer" | | 1. means a transfer of employment to which the Employment Regulations applies; | |
| "Relevant Transfer Date" | | 1. means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place; | |
| "Relief Notice" | | 1. has the meaning given to it in Clause 33.2.2 (Supplier Relief Due to Authority Cause); | |
| "Replacement Services" | | 1. means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date, whether those services are provided by the Authority internally and/or by any third party; | |
| "Replacement Sub-Contractor" | | 1. means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor); | |
| "Replacement Supplier" | | 1. means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority; | |
| "Request for Information" | | 1. means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs; | |
| "Restricted Country" | | 1. (a) any country outside the European Economic Area, and 2. (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC; | |
| "Satisfaction Certificate" | | 1. means the certificate materially in the form of the document contained in Annex 2 of Part A to Schedule 5 granted by the Authority when the Supplier has Achieved a Milestone; | |
| "Schedule" | | 1. means a schedule to this Contract; | |
| "Security Management Plan" | | 1. means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 8 (Security) a draft of which has been provided by the Supplier to the Authority in accordance with paragraph 4 of Schedule 8 (Security) and as updated from time to time; | |
| "Security Policy" | | 1. means the Authority's security policy and guidance as set out in Annex 1 of Schedule 8 (Security) as updated from time to time; | |
| “Service Credit” | | 1. means the sum(s) payable in respect of a Performance Indicator Failure by the Supplier to meet one or more Target Performance Levels as specified in Schedule 6 (Performance Measurement and Monitoring); | |
| "Service Transfer" | | 1. means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor; | |
| "Service Transfer Date" | | 1. means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; | |
| “Services” | | 1. means any of the services to be provided by the Supplier to the Authority as referred to in Schedule 2 (Services) or elsewhere in this Contract; | |
| "Sites" | | 1. means any premises (including the Authority Premises, the Supplier’s premises or third party premises) from, to or at which:    1. the Services are (or are to be) provided; or    2. the Supplier manages, organises or otherwise directs the provision or the use of the Services; | |
| "Specific Change in Law" | | 1. means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; | |
| "Staffing Information" | | 1. has the meaning given to it in Schedule 11 (Staff Transfer); | |
| “Stakeholder” | | 1. means any person or organisation (or groups thereof) with an interest or concern in the NHS, health research or the NIHR generally; | |
| "Standards" | | 1. means any:    1. standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;    2. standards detailed by the Authority in this Contract and the Authorities policies as notified to the Supplier from time to time;    3. standards agreed between the Parties from time to time; and    4. relevant Government codes of practice and guidance applicable from time to time. | |
| "Sub-Contract" | | 1. means any contract or agreement or proposed contract or agreement between the Supplier (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Supplier (or a Sub-Contractor) the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof; | |
| "Sub-Contractor" | | 1. means any third party with whom: 2. (a) the Supplier enters into a Sub-Contract; or 3. (b) a third party under (a) above enters into a Sub-Contract, 4. or the servants or agents of that third party. | |
| "Supplier" | | 1. means the person, firm, company or organisation named in the recitals with whom the Authority enters into this Contract; | |
| "Supplier Assets" | | 1. means all assets used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets; | |
| "Supplier Equipment" | | 1. means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) solely in the performance of its obligations under this Contract; | |
| "Supplier IPR" | | 1. means:    1. Intellectual Property Rights owned by the Supplier before the Contract Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or    2. Intellectual Property Rights created by the Supplier independently of this Contract. | |
| "Supplier Non-Performance" | | 1. has the meaning given to it in Clause 33.1 (Supplier Relief Due to Authority Cause); | |
| "Supplier Personnel" | | 1. means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier’s obligations under this Contract; | |
| "Supplier Profit" | | 1. means the difference between the total Contract Charges (in nominal cash flow terms) and total Costs (in nominal cash flow terms); | |
| "Supplier's Confidential Information" | | 1. means:    1. any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier IPR) trade secrets, Know-How, and/or personnel of the Supplier;    2. any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with this Contract;    3. information derived from any of the above. | |
| “Target Performance Level” | | 1. the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the Performance Indicators from time to time; | |
| "Tender" | | 1. means the tender submitted by the Supplier to the Authority on 13 March 2017 and annexed to or referred to in Schedule 20 (Tender); | |
| "Termination Notice" | | 1. means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination; | |
| "Third Party IPR" | | 1. means Intellectual Property Rights owned by a third party (including a Sub-Contractor) which is or will be used by the Supplier for the purpose of providing the Services including but not limited to those Third Party IPR listed in Schedule 20 (Tender), as updated by the Supplier pursuant to that Schedule during the Contract Period; | |
| Third Party Software" | | 1. means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services; | |
| "Transferring Former Supplier Employees" | | 1. means, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; | |
| "Transferring Supplier Employees" | | 1. means those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date; | |
| “Transition Oversight Board” | | 1. has the meaning given to it Schedule 3 (Governance); | |
| “Transparency Principles” | | 1. means the principles which set out the requirement for the proactive release of information under the Government’s transparency commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both Government and suppliers to consider the information that should be made available when Government signs a contract with a supplier; | |
| "Valid Invoice" | | 1. means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Schedule 4 (Contract Charges, Payment and Invoicing); | |
| "Variation" | | 1. has the meaning given to it in Clause 16.1.1 (Variation Procedure); | |
| "Variation Form" | | 1. means the form set out in Schedule 18 (Variation Form); | |
| "Variation Procedure" | | 1. means the procedure set out in Clause 16.1 (Variation Procedure); | |
| "VAT" | | 1. means value added tax in accordance with the provisions of the Value Added Tax Act 1994; | |
| "Worker" | | 1. means any one of the Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees [https://www.gov.uk/government/uploads/system/uploads/ attachment data/file/418726/PPN 08-15 T](https://www.gov.uk/government/uploads/system/uploads/%20attachment%20data/file/418726/PPN%2008-15%20T)ax arrangements for public appointees.pdf applies in respect of the Services; | |
| "Working Day" | | 1. means any Day other than a Saturday or Sunday or public holiday in England and Wales. | |

SCHEDULE 2: SERVICES

**DETAILED REQUIREMENTS**

**NIHR Office for Clinical Research Infrastructure (NOCRI)**

**Descriptive Document for Proposed Service Requirement – 25 Oct 2016**

**Introduction**

The National Institute for Health Research (NIHR) is funded through the Department of Health to improve the health and wealth of the nation through research.

The NIHR is a large, multi-faceted and nationally distributed organisation.

Since its establishment in April 2006, the NIHR has transformed research in the NHS. It has increased the volume of applied health research for the benefit of patients and the public, driven faster translation of basic science discoveries into tangible benefits for patients and the economy, and developed and supported the people who conduct and contribute to applied health research.

The Health and Social Care Act 2012 places a statutory duty to promote research, and powers to support it, on the Secretary of State and on all levels of the NHS including NHS England and Clinical Commissioning Groups. The NIHR provides a key means through which the Secretary of State discharges this duty.

The NIHR plays a key role in the Government’s strategy for economic growth, attracting investment by the life-sciences industries through its world-class infrastructure for health research.

Together, the NIHR people, programmes, centres of excellence, and systems represent the most integrated health research system in the world.

**NIHR Aims**

The NIHR provides a health research system in which the NHS supports outstanding individuals working in world-class facilities, conducting leading-edge research focused on the needs of patients and the public. It aims to:

* Establish the NHS as an internationally recognised centre of research excellence.
* Attract, develop and retain the best research professionals to conduct people-based research.
* Commission research focused on improving health and social care.
* Increase the opportunities for patients and the public to participate in, and benefit from, research.
* Promote and protect the interests of patients and the public in health research.
* Drive faster translation of scientific discoveries into tangible benefits for patients.
* Maximise the research potential of the NHS to contribute to the economic growth of the country through the life sciences industry.
* Act as a sound custodian of public money for the public good.

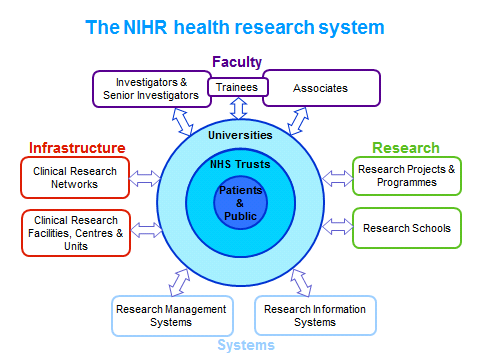
The NIHR works in partnership with many sectors including the public and service users, the NHS, public health, other Government funders, the academic and third sectors and industry.

**NIHR Structure**

The NIHR manages its health research activities through four main work strands:

* **Research**: commissioning and funding research.
* **Infrastructure**: providing the research facilities and people in the NHS for a thriving research environment.
* **Faculty**: supporting the individuals carrying out and participating in research.
* **Systems**: promoting faster, easier clinical research through unified, streamlined and simple systems for managing ethical research and its outputs.

The following diagram shows the NIHR health research system, with the interests of patients and the public at its heart.



**The NIHR OFFICE for CLINICAL RESEARCH INFRASTRUCTURE (NOCRI)**

**Overview**

The NIHR is establishing the NHS as an internationally recognised location for research excellence by providing the NHS with the support and infrastructure it needs to conduct first class research funded by Government and its partners in the charity and industrial sectors. The NIHR funds a variety of forms of NHS research infrastructure in the NHS to support the different types of research needed to bridge the gap in translating scientific inventions into products and services for widespread uptake in the NHS.

Within this the roles of NOCRI are to:

* champion, support and maximise the coordinated working of the Department of Health’s £0.5bn/year investment in research infrastructure in the NHS
* help other public, industry and charity research funders navigate this infrastructure

**Aims**

* Champion and support cross-infrastructure working, where this adds significant value.
* Create greater coherence and functional integration of the research infrastructure in the NHS which NIHR funds and hence maximise its impact.
* Facilitate rapid, informed and productive interactions with other public, charity and industry research funders and investigators who are interested in working with the NIHR-funded infrastructure.
* Strengthen enduring relationships between the NIHR and NIHR research infrastructure with biotech, medtech and pharma companies and contract research organisations, charities and other public research funders.
* Ensure that the NIHR infrastructure is responsive to the needs of users.
* Promote and enhance the nation’s reputation as a world-class centre for early translational (experimental medicine), clinical and applied clinical research.

**Scope**

NOCRI covers all research infrastructure receiving NIHR funding which currently comprises:

* Biomedical Research Centres
* Biomedical Research Units
* Clinical Research Facilities
* CR-UK/NIHR Experimental Cancer Medicine Centres (ECMCs) through working with the ECMC secretariat/programme office
* Patient Safety Translational Research Centres
* Healthcare Technology Co-operatives
* Diagnostic Evidence Co-operatives
* Collaborations for Leadership in Applied Health Research and Care.

NOCRI, established in December 2009, works closely with the Department of Health Science, Research and Evidence Directorate (SRED), Directors of NIHR-funded infrastructure and their staff, the NIHR Clinical Research Network, UK CRF Network, the ECMC secretariat/programme office, the life sciences and other industries, trade associations, co-funders of the research infrastructure and research funders in order to achieve its objectives.

In order to meet its objectives, NOCRI works closely with, and reports to, the Department of Health SRE Directorate.

NOCRI requires some key roles in order to deliver the proposed functions:

* Managing Director
* Programme Director for NIHR Translational Research Partnerships and Collaborations
* Industry liaison

NOCRI currently has 14 Whole Time Equivalent (WTE) members of staff. The anticipated budget for this endeavour going forwards is £1.6M a year.

**Role and functions**

NOCRI's key roles and functions are set out below.

NOCRI will:

* Facilitate collaborations between NIHR-funded infrastructure and funders of research, including industry and charities, prioritising those of greatest significance to the health and wealth of the nation.
* promote and enhance the nation’s reputation as a world-class centre for early translation (experimental medicine), clinical and applied clinical research, as well as supporting how the NIHR contributes to broader economic growth, including through working with other government departments and functions such as UKTI.
* maximise the impact of the NIHR as a whole, by contributing or leading work to shorten the time it takes to develop new therapies and medical technologies.
* manage the NIHR Translational Research Partnerships and Collaborations
* provide oversight of operation of the UK CRF Network
* facilitate NIHR Translational Research Collaborations created to enhance translation into patient benefit and collaboration across the NIHR research infrastructure – currently there is a Collaboration in Dementia and one in rare Diseases, with the potential of others being created at the direction of the DH. NOCRI supports opportunities where collaborations bring added value and overcome disease and technical challenges.
* provide analyses, intelligence and information on NIHR research infrastructure portfolios to facilitate collaborations including with other public, industry and charity research funders.
* provide information and intelligence and support as required for meeting information and briefing requests, responding to parliamentary questions and other requests for information as required.
* provide seamless and rapid links to the NIHR's [Clinical Research Network](http://nihr2014.nhs.sitekit.net/industry/about-the-nihr-clinical-research-network.htm) to ensure efficient and effective delivery of appropriate research studies.
* Strengthen enduring relationships between the NIHR and NIHR research infrastructure with biotech, medtech and pharma companies and contract research organisations, charities and other public research funders.
* as a unique resource for the global [life sciences industry](http://nihr2014.nhs.sitekit.net/industry) - sign post to and improve the quality, efficiency and success of translational research.  NOCRI will help companies of all sizes work with the right people within the NIHR infrastructure and makes it easy for infrastructure and industry to work together.

**Milestones, timetables and reporting**

All NOCRI work-streams will require detailed project timetables with milestones. NOCRI will monitor projects and report on the programme or individual projects within it as required, ensuring that they keep to the timetable and achieve the project’s milestones. This will require a sound understanding of the research environment as well as strong administrative skills.

NOCRI will be responsible for forecasting, profiling and reporting on annual budgets from April 1st to March 31st of each of the years covered.

NOCRI will be required to set up and run, in liaison with SRED, financially sound and transparent accounting systems. NOCRI will be expected to adopt information management systems that are compatible with systems already in use by other parts of NIHR. The contractor will provide progress reports, including financial summaries, in respect of the programme as required. Bidders must be able to demonstrate the necessary skills to deliver this aspect of their bid.

NOCRI will provide notice and copies of any publications arising from the work that they do and will alert the Department immediately to such forthcoming publications and ensure that it receives advance copies as soon as these are available.

NOCRI will use its best endeavours to ensure, as far as possible, that intellectual property rights (IPR) of value to the NHS are properly protected and managed.

Annex – NOCRI Process Maps

*Information redacted in line with section 43 of the FOIA*

SCHEDULE 3: GOVERNANCE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “Board Member” | 1. the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with this Schedule 3; |
| “Boards” | 1. the Contract Management Board and Transition Oversight Board and “**Board**” shall mean any of them; |
| “Contract Managers” | 1. the individuals appointed as such by the Authority and the Supplier in accordance with this Schedule 3; |
| “Transition Oversight Board” | 1. the body described in paragraph 5; and |
| “Contract Management Board” | 1. the body described in paragraph 4. |

MANAGEMENT OF THE SERVICES

Accountability

* + 1. The Supplier shall be directly accountable to the Department of Health Deputy Director – Head of Research Finance, Systems, Contracting, Impact and Regulation and ultimately, via the Director of Science, Research and Evidence, to the Department of Health – the Secretary of State for Health.

Contract Managers

* + 1. The Supplier shall appoint the NOCRI CEO as its Contract Manager and the Authority shall appoint any person as its Contract Manager for the purposes of this Contract through whom the Services shall be managed day-to-day in accordance with this Schedule.
    2. In addition to any Board meetings, the Supplier shall attend meetings with the Authority upon reasonable notice from the Authority Contract Manager to review progress and discuss the Services.

Accountable Officer

* + 1. The Supplier shall appoint an accountable officer who will be responsible for the strategic management of this Contract and be responsible for quality assurance of the Services provided by the Supplier (“**Accountable Officer**”). The Accountable Officer shall attend Board meetings at the request of the Authority.
  1. **Resources**
     1. Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

Mutual trust and co-operation

* + 1. Without prejudice to the Authority’s rights of Approval (as set out in this Schedule 3 or elsewhere in the Contract) or any other of the Authority’s rights and remedies under this Contract, both Parties shall work together:
       1. in accordance with this Schedule 3, and
       2. in a spirit of mutual trust and co-operation such that the aims, objectives and specific provisions of this Contract can be fully realised.
  1. **Behaviours** 
     1. The Authority shall be committed to:
        1. proactively helping to resolve issues and mitigate risks;
        2. responding to feedback from the Supplier, and taking action on problem areas effectively;
        3. demonstrating consistent willingness to build long term and sustainable working relationships with the Supplier;
        4. consulting the Supplier, and working jointly, to address challenges involved with the delivery of the Services;
        5. demonstrating transparency where appropriate;
        6. sharing and interacting in an open and forward looking manner; communicating concisely, consistently and in a well-considered way appropriate for Supplier Personnel;
        7. proactivity in raising likely changes in approach arising from Law and Standards;
        8. fully articulating requirements efficiently; and
        9. providing adequate and detailed documentation that describes its needs, expectations, and requirements in a timely manner to enable the Supplier to conduct its work, with a delivery timetable that is described adequately.
     2. Without prejudice to any express obligations on the Supplier elsewhere in the Contract, the Supplier shall be committed to:
        1. giving warnings to the Authority within 5 Working Days of becoming aware of any matter that could affect the achievement of any aims, objectives and specific provisions of this Contract;
        2. proactively resolving issues and mitigating risk;
        3. proactively sharing knowledge with the Authority;
        4. being responsive and adaptive to the Authority’s language and style;
        5. working in a collaborative and supportive way with the Authority and other suppliers whilst communicating in a well-considered, consistent, concise straightforward and appropriate way for a wide range of Stakeholders;
        6. co-operating with the Authority and Stakeholders in obtaining and providing information which they need in connection with the Services;
        7. being customer focused, business aware and creative;
        8. prioritising value over cost, tailoring provision of the Services to feedback and change requests;
        9. demonstrating innovative behaviours, generating ideas and concepts for areas of work; getting involved in productive discussions about ideas and innovations.

BOARDS

Establishment and structure of the Boards

* + 1. The Boards shall be established by the Authority for the purposes of this Contract on which both the Supplier and the Authority shall be represented.
    2. In relation to each Board, the:
       1. Authority Board Members;
       2. Supplier Board Members;
       3. frequency that the Board shall meet (unless otherwise agreed between the Parties);
       4. location of the Board's meetings; and
       5. planned start date by which the Board shall be established,

shall be as set out in Annex 1 (Contract Management Board Representation and Structure).

* + 1. In the event that the Supplier wishes to replace any of its appointed Board Members, the Supplier shall notify the Authority in writing of the proposed change for agreement by the Authority (such agreement not to be unreasonably withheld or delayed). The Authority can replace any of its appointed Board Members at its sole and absolute discretion provided that the Authority has given the Supplier reasonable notice of the replacement in writing. Notwithstanding the foregoing, it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

* + 1. Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
       1. a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
       2. that he/she is debriefed by such delegate after the Board Meeting.
    2. A chairperson shall be appointed by the Authority for each Board as identified in Annex 1 (Contract Management Board Representation and Structure). The chairperson shall be responsible for:
       1. chairing the Board meetings;
       2. monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings; and
       3. facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
    3. The Supplier shall:
       1. schedule Board meetings by agreement with the chairperson;
       2. prepare the agenda for Board meetings for approval by the chairperson;
       3. record the minutes for Board meetings for approval by the chairperson within seven (7) Working Days after Board meetings; and
       4. prepare and circulate all meeting papers to every Board Member no later than ten (10) Working Days before each Board meeting.
    4. Board meetings shall be quorate as long as at least two (2) representatives from each Party are present but the Authority reserves the right to specify in advance a different quorum requirement depending on the nature of the meeting.

ROLE OF THE CONTRACT MANAGEMENT BOARD

The Contract Management Board shall be responsible for reviewing the delivery of the Services and shall:

* + 1. deal with the prioritisation of resources and confirm the appointment of Contract Managers on behalf of the Parties in accordance with paragraph 2.2;
    2. review performance of the Services against the Performance Indicators (see Annex 1 of Part A of Schedule 6) and agree corrective action;
    3. monitor and oversee any Rectification Plan Processes;
    4. review the financial management and performance of the Supplier, including but not limited to the Contract Charges;
    5. review the relationship management arrangements to ensure the continued smooth operation of the Contract.
  1. The Contract Management Board shall meet up to quarterly and at least once in every Contract Year for the annual review meeting (“**Annual Review Meeting**”) which shall be attended by the Contract Management Board members and any other persons considered by the Authority necessary for the review.
  2. During each Annual Review Meeting, the Contract Management Board shall review the performance of the Services over the previous Financial Year which, as a minimum, shall include consideration of the framing and content of the performance data that is to be published. For the avoidance of doubt, the Authority shall have sole and absolute discretion over the framing and content of the performance data that is to be published.
  3. The Supplier agrees and acknowledges that the third (3rd) Annual Review Meeting shall include an internal review of the Contract and the Services by the Authority to determine if the Contract should be extended after the Initial Period (“**the Contract Extension Notice Review**”). The Contract Extension Notice Review undertaken by the Authority may, without limitation to any other rights of the Authority under this Contract, include exercising any of the Authority’s rights under Clause 15 (Records, Audit Access and Open Book Data), which shall for the avoidance of doubt include the Authority undertaking site visits to the Supplier’s offices or premises, considering the results of independent customer feedback on the Services and consultations by the Authority with scientific experts on all aspects of the science added research management process. The Supplier shall provide the Authority with any additional information or documentation required to assist with the Contract Extension Notice Review at no additional cost to the Authority. For the avoidance of doubt, the decision to serve the Contract Extension Notice following the Contract Extension Notice Review shall be at the sole discretion of the Authority.
  4. Where the Authority considers that the Contract is to be extended beyond the Initial Period, the Authority shall serve the Contract Extension Notice on the Supplier not less than twelve (12) months prior to the end of the Initial Period.
  5. The Authority shall give at least twenty (20) Working Days’ notice of each Contract Management Board meeting, unless the Authority determines in its reasonable opinion that an urgent Contract Management Board meeting is required in which case the Authority shall give a shorter notice. The notice shall include the date, time and location of the meeting.

ROLE OF THE TRANSITION OVERSIGHT BOARD

Without prejudice to Clause 6.2, the Transition Oversight Board shall be responsible for the oversight of transition and implementation and shall:

* + 1. monitor and discuss the development and Approval of the Implementation Plan pursuant to Part A of Schedule 5 (Implementation Plan, Authority Responsibilities, Key Personnel, and Satisfaction Certificate);
    2. consider the Annual Business Plan for the first Financial Year;
    3. monitor and discuss the Supplier’s progress against the Implementation Plan;
    4. monitor and discuss the Supplier’s obligations under Clause 6.2.
  1. The Supplier shall co-operate with any reasonable directions of the Authority, which may include attending meetings and co-operating with the Former Supplier.

CONTRACT MANAGEMENT MECHANISMS

* 1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
  2. The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
     1. the identification and management of risks;
     2. the identification and management of issues; and
     3. monitoring and controlling project plans.

Annual Business Plan

The Supplier shall submit to the Authority for Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed and shall be at the Authority’s sole and absolute discretion), a draft Annual Business Plan, for the first Financial Year in which the Contract Commencement Date falls, within twenty (20) Working Days of the Contract Commencement Date.

Following the Contract Commencement Date, the Supplier shall submit to the Authority for Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed and shall be at the Authority’s sole and absolute discretion) a draft Annual Business Plan, for each successive Financial Year, by 15th January of the preceding financial year.

The Supplier shall ensure that each draft Annual Business Plan:

* + 1. reflects the priorities for the Services as Approved by the Authority;
    2. includes:
       1. a specification of key projects and the outcomes and outputs to be delivered;
       2. a delivery plan against Performance Indicators with key milestones;
       3. financial performance and planning proposals for any on-going Services; and
       4. any reports and other information required from the Supplier pursuant to Clause 13.
  1. Following receipt of a draft Annual Business Plan from the Supplier submitted pursuant to paragraph 7.1 and 7.2, the Authority shall:
     1. review and comment on the draft Annual Business Plan as soon as reasonably practicable; and
     2. notify the Supplier in writing that it approves or rejects the draft Annual Business Plan no later than six weeks after submission.
  2. If the Authority rejects the draft Annual Business Plan:
     1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall then revise the draft Annual Business Plan (taking reasonable account of the Authority’s comments) and shall re-submit a draft Annual Business Plan to the Authority for the Authority's Approval within ten (10) Working Days of the Authority’s notice of rejection. The Authority shall then review and comment on the revised draft Annual Business Plan and notify the Supplier in writing that it approves or rejects it within ten (10) Working Days from receipt.
  3. The provisions of [paragraph](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155) 7.5 of this Schedule shall apply again to any resubmitted draft Annual Business Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure in Schedule 12 at any time.

Reporting

The Supplier shall provide the reports as detailed in the table below:

|  |  |  |
| --- | --- | --- |
| **Name** | **Content** | **Delivery Date** |
| 1. Quarterly Financial Management, Management Information and RMO Information | In a form and otherwise in compliance with the format set out by the Authority  Any other management information reasonably requested by the Authority from time to time. | As soon as reasonably practical following the quarters ending March, June, September and December. |
| 1. Bi-annual Services activity and performance reports | In a form and otherwise in compliance with the format set out by the Authority.  Any other management information reasonably requested by the Authority from time to time. | Bi-annually in March (detailing activity for the year ahead) and June (detailing activity and performance in the preceding year) following the first anniversary of the Contract Commencement Date |

ANNEX 1

Contract Management Board Representation and Structure

[TO BE COMPLETED during transition period]

|  |  |
| --- | --- |
| Authority Members of Contract Management Board | [ ]  [ ]  [ ]  The Authority may wish to appoint other members as necessary; and in particular:  [ ] |
| Supplier Members of Contract Management Board | The Contract Management Board will comprise of the [ ] Senior Management Team, those being:  [ ] |
| Start Date for Contract Management Board meetings | **[ ]** |
| Frequency of Contract Management Board meetings | ***Quarterly Meetings:*** in each Contract Year after the Contract Commencement Date and any additional meetings as reasonably required by the Authority.  ***Annual Meeting***: (covers whole Financial Year PLUS last quarter of previous Financial Year) |
| Location of Contract Management Board meetings | [Authority Premises] |

Transition Oversight Board Representation and Structure

|  |  |
| --- | --- |
| Authority Members of Transition Oversight Board | [ ]  [ ] |
| Supplier Members of Transition Oversight Board | [ ]  [ ] |
| Start Date for Transition Oversight Board meetings | [insert date] |
| Frequency of Transition Oversight Board meetings | The Transition Board will meet as a minimum Monthly, but as required through transition. |
| Location of Transition Oversight Board meetings | [Authority Premises] |

SCHEDULE 4: CONTRACT CHARGES, PAYMENT AND INVOICING

1. definitions

|  |  |
| --- | --- |
| "Reimbursable Expenses"  “Supporting Documentation” | means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Supplier’s expenses policy which shall be substantially in line with the Authority's expenses policy current from time to time, but not including:   * 1. travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and   2. subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;   means sufficient information in writing to enable the Authority to reasonably assess whether the Contract Charges, Reimbursable Expenses and other sums due from the Authority under this Contract detailed in the information are properly payable. |

2. GENERAL PROVISIONS

2.1 This Schedule details the:

2.1.1 Contract Charges for the Services under this Contract (Annex 1);

2.1.2 payment terms/profile for the Contract Charges; (Annex 2)

2.1.3 invoicing procedure (paragraph 6 of this Schedule); and

2.1.4 procedure applicable to any adjustments of the Contract Charges.

3. CONTRACT CHARGES

3.1 The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Schedule. The Supplier acknowledges and agrees that, subject to paragraph 7 of this Schedule (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Initial Period.

4. COSTS AND EXPENSES

* 1. Subject to paragraph 9.1, the Contract Charges include all costs and expenses relating to the Services and/or the Supplier’s performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or

4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Contract Commencement Date.

5. PAYMENT TERMS/PAYMENT PROFILE

* 1. The payment terms/profile which are applicable to this Contract are set out in Annex 2 of this Schedule.

6. INVOICING PROCEDURE

6.1 The Authority shall pay all undisputed sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in paragraph 6.4 of this Schedule and in accordance with the provisions of this Contract.

6.2 The Supplier shall ensure that each Valid Invoice (whether submitted electronically or in a paper form, as the Authority may specify):

* + 1. contains:
       1. any unique purchase order reference number provided by the Authority;
       2. the date of invoice;
       3. the correct reference for this Contract;
       4. dates between which the Services subject of each of the Contract Charges detailed on the invoice were performed;
       5. a detailed breakdown and description of the Services to which the Contract Charges are applicable to the invoice relates;
       6. payments due in respect of Achievement of a Milestone, including the Satisfaction Certificate number for each relevant Milestone;
       7. details of any Service Credits or similar deductions that shall apply to the Contract Charges detailed on the invoice;
       8. details of any Cost Savings that shall be set out in accordance with paragraph 10 of this Schedule 4 from the Contract Charges detailed on the invoice;
       9. a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
       10. the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

6.2.2 shows separately:

* + - 1. the VAT added to the due and payable Contract Charges in accordance with Clause 17.2.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and

6.2.3 is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

6.3 All payments due by one Party to the other shall be made within thirty (30) days of verifying that the invoice is a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

6.4 The Supplier shall submit invoices directly to the following address:

Department of Health, Science, Research and Evidence, 2E47, Quarry House, Quarry Hill, Leeds LS2 7UE.

7. ADJUSTMENT OF CONTRACT CHARGES

7.1 The Contract Charges shall only be varied:

7.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 16.2 of this Contract (Legislative Change);

7.1.2 where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 13 of this Contract (Continuous Improvement);

7.1.3 where all or part of the Contract Charges are reduced as a result of a review of Contract Charges in accordance with Clause 19 of this Contract (Benchmarking); or

7.1.4 where the Parties agree to a change in the Contract Charges in accordance with Clause 16.1 (Variation Procedure) of this Contract.

8. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES

8.1 Variations in accordance with the provisions of this Schedule to all or part the Contract Charges (as the case may be) shall be made by the Authority to take effect:

8.1.1 in accordance with Clause 16.2 (Legislative Change) of this Contract where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.1 of this Schedule;

8.1.2 in accordance with Clause 13 (Continuous Improvement) of this Contract where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.2 of this Schedule;

8.1.3 in accordance with Clause 19 (Benchmarking) of this Contract where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.3 of this Schedule; or

8.1.4 in accordance with Clause 16.1 (Variation Procedure) of this Contract where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.4 to this Schedule;

and the Parties shall amend the Contract Charges shown in Annex 1 (Contract Charges) to this Schedule to reflect such variations.

9. **REIMBURSABLE EXPENSES**

9.1 Where the Authority agrees in writing, the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to the relevant Contract Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

9.2 The Authority shall provide a copy of its expenses policy to the Supplier upon request.

10. **GAIN SHARE**

10.1 Any Cost Savings shall be dealt with in accordance with the Variation Procedure and this paragraph 10.

10.2 The Cost Savings shall be split between the Authority and the Supplier as follows:

10.2.1 50% of the Cost Savings shall be paid to the Authority by way of a deduction in the Supplier’s quarterly invoice as detailed in paragraph 6.2.1(h) of this Schedule 4;

10.2.2 50% of the Cost Savings shall be retained by the Supplier and clearly identified in the Supplier’s quarterly invoice as detailed in paragraph 6.2.1(h) of this Schedule 4.

10.3 Notwithstanding the provisions of paragraph 10.2 above, the Authority may wish to reinvest up to 100% of its share of the Cost Savings in the delivery of the Services. If the Authority elects to do so, it shall notify the Supplier prior to agreeing a Variation Form under the Variation Procedure and the Supplier shall reinvest this Cost Saving together with a matched contribution from the Supplier up to the maximum combined value of the Cost Saving in the delivery of the Services in accordance with an Agreed Reinvestment Plan and in accordance with paragraph 10.4 below.

10.4 Pursuant to paragraphs 10.2.2 and 10.3 above, the Supplier shall provide the Authority with a draft reinvestment plan for approval prior to agreeing a Variation Form under the Variation Procedure. The Parties shall agree the reinvestment plan within 30 Working Days of receipt by the Authority of the draft reinvestment plan (the “Agreed Reinvestment Plan”). The Supplier shall use all commercially reasonable endeavours to implement the Agreed Reinvestment Plan within the agreed timescales. Where the Parties cannot agree the draft reinvestment plan then the Dispute Resolution Procedure shall apply.

10.5 In the event of early termination or expiry of the Contract, the Parties shall distribute any unspent Cost Savings in the ratio set out in paragraph 10.2 above. The Supplier shall issue a credit note to the Authority in respect of the Authority’s share of the unspent Cost Savings and any further payments due under the Contract shall be offset by this amount.

10.6 Notwithstanding the provisions of paragraph 10.5 above, the Supplier shall use all commercially reasonable endeavours to ensure that any Cost Savings are reinvested in the delivery of the Services in accordance with the Agreed Reinvestment Plan. Any failure to implement the Agreed Reinvestment Plan will constitute a Default.

ANNEX 1: CONTRACT CHARGES

1. General

The Contract Charges applicable during the Initial Period are set out below:

The Service Credits shall be payable in accordance with Schedule 6 (Performance Measurement and Monitoring).

* 1. The Contract Charges applicable during any Extension Period shall be agreed between the Parties in accordance with Clause 16.1 (Variation Procedure) and with reference to the indicative prices in the Supplier’s Tender (Schedule 20).
  2. The Supplier shall keep records of Supplier Personnel utilisation and expenses incurred and submit a summary of the relevant records with each Valid Invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within ten (10) Working Days of receipt of the Authority’s request.

See attached digital file for full pricing breakdown:

LGC\_NOCRI\_ISFT\_Multi\_Schedule\_2\_Pricing.xlsx

ANNEX 2: PAYMENT TERMS/PROFILE

Invoices shall be submitted quarterly in arrears as detailed in paragraph 6 of Schedule 4.

Prices quoted are exclusive of VAT. For the avoidance of doubt, the Supplier’s proposed payment schedule as on the Contract Commencement Date is set out in this Annex 2. Any figures quoted are strictly subject to the payment terms of this Contract including but not limited to the paragraphs and Annex 1 of this Schedule 4. The Contract Management Board shall agree the payment schedule and any reviews and updates to it in accordance with Schedule 3 (Governance).

SCHEDULE 5: IMPLEMENTATION PLAN, AUTHORITY RESPONSIBILITIES, KEY PERSONNEL, AND SATISFACTION CERTIFICATE

INTRODUCTION

This Schedule specifies:

In **Part A**, the Implementation Plan in accordance with which the Supplier shall provide the Services, with the Outline Implementation Plan in Annex 1 and the Satisfaction Certificate in Annex 2;

In **Part B**, the Authority Responsibilities in respect of facilitating the Supplier’s achievement of the Implementation Plan; and

In **Part C**, the Key Personnel and their Key Roles assigned by the Supplier to this Contract in accordance with Clause 20.1 of this Contract (Key Personnel).

12/08/2013

PART A: IMPLEMENTATION PLAN

1. INTRODUCTION

* 1. This Schedule:
     1. defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
     2. identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Satisfaction Certificate.

OUTLINE IMPLEMENTATION PLAN

The Outline Implementation Plan is set out in Annex 1 to this Part A.

The Satisfaction Certificate for certifying achievement of the Milestones is set out in Annex 2 to this Part A.

All changes to the Outline Implementation Plan shall be subject to the Variation Procedure provided that the Supplier shall not attempt to postpone any of the Milestones and/or Milestone Dates using the Variation Procedure.

APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for Approval within three (3) Months of the Commencement Date.

The Supplier shall ensure that the draft Detailed Implementation Plan:

* + 1. incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
    2. incorporates any Deliverables, activities and associated time scales agreed by the Parties and/or the Transition Oversight Board;
    3. incorporates any Deliverables, activities and associated timescales set out in the Tender;
    4. clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
    5. is produced using a software tool as specified by or agreed with the Authority.

Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with paragraph 3.1, the Authority shall have the right:

* + 1. to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
       1. details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
       2. copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
       3. any other work in progress in relation to the Detailed Implementation Plan; and
    2. to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

* + 1. review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
    2. notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than ten (10) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

If the Authority rejects the draft Detailed Implementation Plan:

* + 1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
    2. the Supplier shall then revise the draft Detailed Implementation Plan (taking account of the Authority's comments and agreements arising from the Transition Oversight Board) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's Approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of [p](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155)aragraph 3.4 and this [paragraph](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a410835) 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party shall refer any disputed matters in the first instance for resolution through the Transition Oversight Board.

If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority’s Approval.

UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

* 1. Following the Approval of the Detailed Implementation Plan by the Authority:
     1. the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within twenty (20) Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred in the first instance to the Transition Oversight Board for resolution);
     2. the Supplier shall submit a draft revised Detailed Implementation Plan in accordance with any directions from the Transition Oversight Board;
     3. any revised Detailed Implementation Plan shall (subject to paragraph 4.2) be submitted by the Supplier for Approval in accordance with the procedure set out in paragraph 3; and
     4. the Supplier’s performance against the Implementation Plan shall be monitored at meetings of the Transition Oversight Board. In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than ten (10) Working Days in advance of each meeting of the Transition Oversight Board.

Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring Approval, any material amendments to the Detailed Implementation Plan shall be subject to the Variation Procedure provided that:

* + 1. any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
    2. in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 33 (Supplier Relief due to Authority Cause).

Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

12/08/2013

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

*Information redacted in line with section 43 of the FOIA*

ANNEX 2: SATISFACTION CERTIFICATE

To: [Insert Supplier details]

From: The Secretary of State for Health

[insert Date dd/mm/yyyy]

Dear Sirs,

**SATISFACTION CERTIFICATE**

Milestone:

[Guidance Note to Authority: Insert description of the relevant Milestones]

We refer to the agreement (**"Contract"**) relating to the provision of the Services between the Secretary of State for Health (**"Authority"**) and [*insert name*](**"Supplier"**) dated [*insert Contract Commencement Date dd/mm/yyyy*].

The definitions for terms capitalised in this certificate are set out in this Contract.

[We confirm that all the] [Deliverables relating to Milestone(s)/Milestone(s) *[insert relevant description and/or reference number(s) from the Implementation Plan]* have been tested successfully in accordance with the testing strategy plan relevant to those Milestone(s)]

Yours faithfully

[insert details of DH contract manager]

Research and Development Directorate

acting on behalf of

Department of Health

PART B: AUTHORITY RESPONSIBILITIES

General

* 1. The Authority Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled “Authority Responsibilities” in the Implementation Plan, as appropriate.

12/08/2013

PART C: KEY PERSONNEL

General

* 1. The Supplier has assigned the following Key Personnel to this Contract in the Key Roles detailed below:

|  |  |  |  |
| --- | --- | --- | --- |
| Position | Name | Contact Details | Role/responsibilities |
| Director, Grant Management Group | Information redacted in line with section 40 of the FOIA | Information redacted in line with section 40 of the FOIA |  |

12/08/2013

SCHEDULE 6: PERFORMANCE MEASUREMENT AND MONITORING

PART A: PERFORMANCE INDICATORS

PERFORMANCE INDICATORS

Annex 1 of Part A of this Schedule sets out the Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.

The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.

12/08/2013

ANNEX 1 TO PART A:

PERFORMANCE INDICATORS

Performance Indicators as set out below are specific to the performance of the Services:

12/08/2013

|  |
| --- |
| **NOCRI Performance Indicators attracting Service Credits** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Indicator** | **Measure** | **Reporting** | **Target Performance Level** |
| Stakeholder feedback |  |  | To be agreed by the Parties at the end of Year 1 |
| Delivery against cost-efficiency CI initiatives | Financial efficiency demonstrated  According to clause 13 and in line with agreed targets noting assumptions, reliance on action of other independent parties (e.g. Programme Leads and other NIHR Centres) and excluding issues out of NOCRI control  Excluding where due failure on part of Authority | Annual | **Amber** = Failure to deliver Clause 13.4 Continuous Improvements.  **Red** =failure to rectify according to Rectification Plan |
| Vacancy rate | % vacant positions/total positions according to annually agreed workforce plan.  Excludes maternity and other short term vacancies. | Annual | **Amber** >10%  **Red** = failure to rectify according to Rectification Plan |
| Response to Parliamentary & FOI requests | Time  Individual reports delivered to reasonable agreed deadline.  Excludes requests failed to be delivered due to circumstances mutually agreed to be out of NOCRI control.  Quality  Responses are accurate. | Time  Exception report for failure  Annual for aggregated response rate  Quality  Reviewed through annual contract review. | Time  **Green** = 100% of requests delivered to deadline  **Amber** = 98-100% of requests delivered to agreed deadline  **Red** <98% delivered to agreed deadline  Quality  **Amber** = unsatisfactory review resulting in clause 32.2rectification process.  **Red** = failure to deliver Rectification Plan |
| Response to information/briefing requests (non-PQ/FOI) | Time  Individual reports delivered to agreed deadline  Excludes requests failed to be delivered due to circumstances mutually agreed to be out of NOCRI control.  Quality  Responses are accurate | Time  Exception report for failure  Annual for aggregated response rate  Quality  Reviewed through annual contract review. | Time  **Green** = 100% of requests delivered to agreed deadline  **Amber** = 98-100% of requests delivered to agreed deadline  **Red** <98% delivered to agreed deadline    Quality  **Amber** = unsatisfactory review  **Red** = failure to deliver Rectification Plan |
| New projects resulting from NOCRI activity | Number of collaborations by type | Quarterly report Annual report | Total # by type |
| Funding leveraged resulting from NOCRI activity | Value of contracts by type | Quarterly Annual | £ by type |
| Conversion rate | % leads converted into collaborations formed | Annual | % |
| Through process audit | Specific documentation to be made available for inspection (sets of documents to be agreed - for example agreements or contacts) | x2 DH led and x2 internal per annum | Full compliance - **Green**  Missing documentation - **Red** |
| Production of a forward business plan for the forward financial year | Plan to be submitted and agreed | Annual | Time Delivery to deadline - **Green** Failure to meet deadline – **Amber**  Quality Acceptance first time - **Green** Single revision – **Amber** |
| Response time to approaches and requests from Industry, Charity, wider NIHR and other stakeholders. | Specific measures to be agreed but covering: efficiency, quality, feedback | Quarterly report Annual report | Time Delivery to deadline – **Green**  Failure to meet deadline – **Amber** |

|  |  |  |  |
| --- | --- | --- | --- |
| New companies working in the NIHR Infrastructure | NOCRI Customer Relationship Management system (CRM)  Data returns to NOCRI from all NIHR infrastructure elements | Quarterly Report  Annual Report | To be discussed and agreed with Suppliers during the transition period |
| New commercial research studies in NIHR Infrastructure | CRN CPMS + NOCRI CRM  Data returns to NOCRI from all NIHR infrastructure elements | Quarterly Report  Annual Report |
| Recruitment to NIHR research | CRN CPMS  Data returns to NOCRI from all NIHR infrastructure elements | Quarterly Report  Annual Report |
| Value of new commercial research contracts in NIHR | NOCRI CRM  Data returns to NOCRI from all NIHR infrastructure elements | Annual Report |
| Value of new non-commercial research grants in NIHR | Data returns to NOCRI from all NIHR infrastructure elements | Annual Report |
| New patent applications from NIHR infrastructure | Data returns to NOCRI from all NIHR infrastructure elements | Annual Report |
| New translational research partnerships / collaborations agreed | Data returns to NOCRI from all NIHR infrastructure elements | Annual Report |
| Patient and Public Involvement, Engagement and Participation in NIHR Infrastructure | Information returns to NOCRI from all NIHR infrastructure elements | Annual Report |
| External speaking and exhibition engagements | NOCRI CRM | Quarterly Report  Annual Report |
| NOCRI interaction with NHS organisations | NOCRI CRM | Quarterly Report  Annual Report |
| Customer and stakeholder feedback | Responses to annual survey conducted by NOCRI | Annual Report |
| Customer and stakeholder feedback | Feedback to DH regarding NOCRI service - recorded on NOCRI internal record | As required  Digest in Annual Report |
| Financial management | Internal NOCRI record | Annual Report |
| Annual Business Plan delivery | Internal NOCRI record | Quarterly Report  Annual Report |
| Availability of ICT systems | System derived data  Recorded outage  Internal NOCRI record | Quarterly Report  Annual Report |
| Responsiveness to DH information requests | Email record of requests and responses | Quarterly Report  Annual Report |
| Management of reputational issues | Internal NOCRI record | Exception reporting  Annual Report |
| NIHR Vision Strategy Aims and Metrics (VSAM) Plan delivery | Internal NOCRI record  DH VSAM monitoring records | Quarterly Report  Annual Report |

|  |  |  |  |
| --- | --- | --- | --- |
| Packaged offerings | Infrastructure packages launched (e.g. new TRC’s); industry feedback received | AR | To be discussed and agreed with Suppliers during the transition period |
| Enquiries received | CRM – number received and category breakdown | RT/QR/AR |
| Events | CRM – number of events and delegates | RT/QR/AR |
| Digital media | Visitor statistics including website hits, followers, etc | QR/AR |
| Meetings/sponsors | CRM – number coordinated and category breakdown | RT/QR/AR |
| Meetings/infrastructure | CRM – number coordinated and category breakdown | RT/QR/AR |
| Confidential discussions | CRM – number logged | RT/QR/AR |
| Money leveraged | Survey of collaboration contract values | QR/AR |
| Collaborations | CRM – new deal logging and number of active collaborations by type | QR/AR |
| Impact assessment | Framework developed; audit after 3 years | AR |
| Brand awareness | SurveyMonkey audit | AR |
| NIHR news stories | Vuelio media monitoring | QR/AR |

**Green** – Target Performance Level met.

**Amber** – Triggers a Performance Indicator Failure and the Authority may serve a notice on the Supplier pursuant to Clause 32.2 (Rectification Plan Process) of the Contract requiring the Supplier to prepare and submit to the Authority a draft Rectification Plan in accordance with Clause 32.2 setting out proposed actions for remedying the poor performance of the Services or breach and ensuring that such poor performance or breach does not occur again (a Rectification Plan) within five Working Days of receipt of notice from the Authority.

**Red** – **Will immediately trigger a Service Credit.**

The Service Credit will be withheld from the Supplier until the breach is remedied in accordance with the Rectification Plan.

Service Credit = £6,000 per KPI, reviewed and managed quarterly, up to a maximum withholding by the Authority of £36,000 per quarter. Withholding of Service Credits will then be reviewed in the following quarter and either

1. reimbursed by the Authority to the Supplier;
2. compounded with a further withholding of Service Credits;
3. Termination under Clause 35.2 of the Contract.

If the Supplier fails to achieve the same Target Performance Level (with the failure being at either amber or red level) during 3 consecutive quarters or 4 quarters in any rolling 18-month period, this will be considered a Default and the provisions of Clause 32.1 (Remedies) shall apply.

If the supplier fails to achieve 3 or more Target Performance Levels during 2 consecutive quarters or 3 quarters in any rolling 18-month period, this will be considered a Default and the provisions of Clause 32.1 (Remedies) shall apply.

PART B: PERFORMANCE MONITORING

Performance monitoring and performance review

In addition to any requirements in Schedule 3 (Governance), the Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier’s performance of the provision of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators including but not limited to the provisions as set out in paragraph 2 of this Part B.

General

* 1. The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Performance Indicators.
  2. The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier.
  3. Unless the Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
  4. In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
  5. The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.
  6. All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 13 of this Contract (Continuous Improvement).
     1. The Authority shall have the right to audit and inspect performance monitoring information as detailed further in Clause 15.2.3(n).

12/08/2013

SCHEDULE 7: not used

SCHEDULE 8: SECURITY

1. DEFINITIONS
   1. In this Schedule 8, the following definitions shall apply:

|  |  |
| --- | --- |
| "Breach of Security" | 1. means the occurrence of:    1. any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology (“**ICT**”), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or    2. the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract, 2. in either case as more particularly set out in the Security Policy in Annex 1 of Schedule 8; |

1. INTRODUCTION
   1. The purpose of this Schedule 8 is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met;
   2. This Schedule 8 covers:
      1. principles of protective security to be applied in delivering the Services;
      2. the creation and maintenance of the Security Management Plan; and
      3. obligations in the event of actual or attempted Breaches of Security.
2. PRINCIPLES OF SECURITY
   1. The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.
   2. The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
      1. is in accordance with the Law and this Contract;
      2. as a minimum demonstrates Good Industry Practice;
      3. complies with the Security Policy in Annex 1;
      4. meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and
      5. complies with the Authority’s ICT policy (if so required by the Authority).
   3. Subject to Clause 28 (Security and Protection of Information) of this Contract the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 8 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
   4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.
3. SECURITY MANAGEMENT PLAN
   1. Introduction
      1. The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule 8. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.
   2. Content of the Security Management Plan
      1. The Security Management Plan shall:
         1. comply with the principles of security set out in paragraph 3 of this Schedule 8 and any other provisions of this Contract relevant to security;
         2. identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
         3. detail the process for managing any security risks from Sub‑Contractors and third parties authorised by the Authority with access to the Services, processes associated with the provision of the Services, the Sites and any ICT, Information and data (including the Authority’s Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
         4. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Sites, and any ICT, Information and data (including the Authority’s Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
         5. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Contract;
         6. set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and the Security Policy in Annex 1; and
         7. be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 8.
   3. Development of the Security Management Plan
      1. Within twenty (20)Working Days after the Contract Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision), the Supplier shall prepare and deliver to the Authority for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
      2. If the Security Management Plan submitted to the Authority in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule 8. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Authority and re-submit to the Authority for Approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
      3. The Authority shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2. However a refusal by the Authority to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.
      4. Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3.2 of this Schedule 8 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule 8.
   4. Amendment and Revision of the Security Management Plan
      1. The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
         1. emerging changes in Good Industry Practice;
         2. any change or proposed change to the Services and/or associated processes;
         3. any change to the Security Policy;
         4. any new perceived or changed security threats; and
         5. any reasonable change in requirements requested by the Authority.
      2. The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
         1. suggested improvements to the effectiveness of the Security Management Plan;
         2. updates to the risk assessments; and
         3. suggested improvements in measuring the effectiveness of controls.
      3. Subject to paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Authority or otherwise) shall be subject to the Variation Procedure in Clause 17 and shall not be implemented until Approved by the Authority.
      4. The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure in Clause 17 but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.
4. BREACH OF SECURITY
   1. Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
   2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
      1. immediately take all reasonable steps(which shall include any action or changes reasonably required by the Authority) necessary to:
         1. minimise the extent of actual or potential harm caused by any Breach of Security;
         2. remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
         3. prevent an equivalent breach in the future exploiting the same root cause failure; and
         4. as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
   3. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy or the requirements of this Schedule 8, then any required change to the Security Management Plan shall be at no cost to the Authority.

ANNEX 1: Security Policy

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf>

<https://www.ncsc.gov.uk/guidance/introduction-understanding-cloud-security>

SCHEDULE 9: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. Definitions
   1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "Business Continuity Plan" | 1. has the meaning given to it in paragraph 2.2.1(b) of this Schedule; |
| "Business Continuity Services" | 1. has the meaning given to it in paragraph 4.2.2 of this Schedule; |
| "Disaster" | 1. means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 5 (five) Working Days or which is reasonably anticipated will mean that the provision of the Services or a material part thereof will be unavailable for that period; |
| "Disaster Recovery Plan" | 1. has the meaning given to it in 2.2.1(c) of this Schedule; |
| "Disaster Recovery Services" | 1. the services embodied in the processes and procedures for restoring the Services following the occurrence of a disaster; |
| "Disaster Recovery System" | 1. the system identified by the Supplier in the Tender which shall be used for the purpose of delivering the Disaster Recovery Services; |
| "Review Report" | 1. has the meaning given to it in paragraph 6.2 of this Schedule; |
| "Supplier's Proposals" | 1. has the meaning given to it in paragraph 6.2.3 of this Schedule; |

BCDR PLAN

* 1. Within thirty (30) Working Days from the Contract Commencement Date the Supplier shall prepare and deliver to the Authority for Approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
     1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
     2. the recovery of the Services in the event of a Disaster.
  2. The BCDR Plan shall:
     1. be divided into three parts:
        1. Part A which shall set out general principles applicable to the BCDR Plan;
        2. Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and
        3. Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**); and
     2. unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.
  3. Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:
     1. review and comment on the draft BCDR Plan as soon as reasonably practicable; and
     2. notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
  4. If the Authority rejects the draft BCDR Plan:
     1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority’s comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's Approval within twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of [paragraph](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155)s 2.3 and 2.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure in Schedule 12 at any time.

PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

* 1. Part A of the BCDR Plan shall:
     1. set out how the business continuity and disaster recovery elements of the Plan link to each other;
     2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Authority by a Related Supplier;
     3. contain an obligation upon the Supplier to liaise with the Authority and (at the Authority’s request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
     4. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;
     5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
     6. contain a risk analysis, including:
        1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
        2. identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
        3. identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and
        4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
     7. provide for documentation of processes, including business processes, and procedures;
     8. set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;
     9. identify the procedures for reverting to “normal service”;
     10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
     11. identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
     12. provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
  2. The BCDR Plan shall be designed so as to ensure that:
     1. the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
     2. the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
     3. it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
     4. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
  3. The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of the Services.
  4. The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

* 1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
     1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
     2. the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
  2. The Business Continuity Plan shall:
     1. address the various possible levels of failures of or disruptions to the provision of Services;
     2. set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps being the “**Business Continuity Services**”);
     3. specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation of the Performance Indicators in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
     4. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

* 1. The Disaster Recovery Plan shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
  3. The Disaster Recovery Plan shall include the following:
     1. the technical design and build specification of the Disaster Recovery System;
     2. details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
        1. any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
        2. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
        3. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
        4. testing and management arrangements.

REVIEW AND AMENDMENT OF THE BCDR PLAN

* 1. The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
     1. on a regular basis and as a minimum once every six (6) Months;
     2. within three Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8; or
     3. where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority’s written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority’s Approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority’s Approval.
  2. Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original Approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **“Review Report”**) setting out:
     1. the findings of the review;
     2. any changes in the risk profile associated with the provision of Services; and
     3. the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
  3. Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:
     1. review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and
     2. notify the Supplier in writing that it approves or rejects the Review Report and the Supplier’s Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
  4. If the Authority rejects the Review Report and/or the Supplier’s Proposals:
     1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall then revise the Review Report and/or the Supplier’s Proposals as the case may be (taking reasonable account of the Authority’s comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier’s Proposals to the Authority for the Authority’s Approval within twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of [paragraphs](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155) 6.3 and 6.4 of this Schedule shall apply again to any resubmitted Review Report and Supplier’s Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure in Schedule 12 at any time.
  5. The Supplier shall as soon as is reasonably practicable after receiving the Authority’s Approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier’s expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

TESTING OF THE BCDR PLAN

* 1. The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Schedule, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
  2. If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority’s requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
  3. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
  4. The Supplier shall ensure that any use by it or any Sub-Contractor of “live” data in such testing is first Approved by the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
  5. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
     1. the outcome of the test;
     2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
     3. the Supplier's proposals for remedying any such failures.
  6. Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
  7. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Contract.
  8. The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

INVOCATION OF THE BCDR PLAN

* 1. In the event of a complete loss of Service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances, the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority.

12/08/2013

SCHEDULE 10: EXIT MANAGEMENT

DEFINITIONS

* 1. In this Schedule, the following definitions shall apply:

|  |  |  |
| --- | --- | --- |
|  | |  |
| "Exit Information" | 1. has the meaning given to it in paragraph 4.1 of this Schedule; |
| "Exit Manager" | 1. means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule; |
| "Registers" | 1. means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule; |
| "Termination Assistance" | 1. means the activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 (Scope of Termination Assistance) of this Schedule 10 (Exit Management) and any other assistance required by the Authority pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | 1. has the meaning given to it in paragraph 6.1 of this Schedule; |
| "Termination Assistance Period" | 1. means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule; |
| "Transferable Contracts" | 1. means the Sub-Contracts, licences for Supplier’s IPR, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences, all relevant Documentation; |
| "Transferring Contracts" | 1. has the meaning given to it in paragraph 9.2 of this Schedule. |

INTRODUCTION

* 1. This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date and the transfer of service provision to the Authority and/or a Replacement Supplier.
  2. The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or a Replacement Supplier at the Expiry Date.

OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

* 1. During the Contract Period, the Supplier shall:
     1. create and maintain a register of all:
        1. Supplier Assets; and
        2. Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
     2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
     3. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
     4. at all times keep the registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
  2. The Supplier shall:
     1. (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or Approval) or payment by the Authority.
  3. Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.1 of this Schedule which the Supplier proposes to enter into after the Contract Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of services to which the relevant agreement relates.
  4. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Contract Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

OBLIGATIONS TO ASSIST ON RE-TENDERING OF Services

* 1. On reasonable notice at any point during the Contract Period, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
     1. details of the Service(s);
     2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
     3. an inventory of Authority Data in the Supplier's possession or control;
     4. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
     5. a list of on-going and/or threatened disputes in relation to the provision of the Services;
     6. all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
     7. such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

* 1. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-Contractors’ prices or costs). The Authority shall comply with FOIA and/or the EIRs exemptions to prevent breaches of confidentiality and/or unlawful disclosure of personal data and/or Commercially Sensitive Information.
  2. The Supplier shall:
     1. allow the Authority or Replacement Supplier upon service of reasonable written notice, access to the Supplier’s premises and to inspect the Supplier’s working systems and procedures relating to the provision of the Services;
     2. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
     3. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
  3. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) Month period.
  4. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
     1. prepare an informed offer for those Services; and
     2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

EXIT PLAN

* 1. The Supplier shall deliver to the Authority an Exit Plan within three (3) Months of the Commencement Date which:
     1. sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract;
     2. complies with the requirements set out in paragraph 5.3 of this Schedule;
     3. is otherwise reasonably satisfactory to the Authority.
  2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved through the Dispute Resolution Procedure in Schedule 12.
  3. Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
     1. how the Exit Information is obtained;
     2. the management structure to be employed during both transfer and cessation of the Services;
     3. the management structure to be employed during the Termination Assistance Period;
     4. a detailed description of both the transfer and cessation processes, including a timetable;
     5. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
     6. details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
     7. proposals for the training of key members of the Replacement Supplier’s personnel in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
     8. proposals for providing the Authority or a Replacement Supplier copies of all documentation:
        1. used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
        2. relating to the use and operation of the Services;
     9. proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
     10. proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
     11. proposals for the disposal of any redundant Services and materials;
     12. procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 11 (Staff Transfer);
     13. the scope of the Termination Assistance that may be required for the benefit of the Authority (including such of the services set out in Annex 1 (Scope of Termination Assistance) as are applicable);
     14. a timetable and critical issues for providing the Termination Assistance;
     15. how the Termination Assistance would be provided (if required) during the Termination Assistance Period;
     16. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
     17. proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.
  4. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
  5. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first Month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  6. Within twenty (20) Working Days after service of a Termination Notice by either Party or 6 Months prior to the expiry of this Contract, the Supplier will submit for the Authority's Approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule 10 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
  7. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure in Schedule 12. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Assistance in accordance with the principles set out in this Schedule 10 and the last approved version of the Exit Plan (insofar as relevant).

TERMINATION ASSISTANCE

* 1. The Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
     1. the date from which Termination Assistance is required;
     2. the nature of the Termination Assistance required; and
     3. the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.
  2. The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

TERMINATION ASSISTANCE PERIOD

* 1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
     1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
     2. in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
     3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
     4. provide the Services and the Termination Assistance at no detriment to the Performance Indicators, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
     5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
  2. Without prejudice to the Supplier’s obligations under paragraph 7.1.3 of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
  3. If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Performance Indicator(s), the Parties shall vary the relevant Performance Indicator(s).

TERMINATION OBLIGATIONS

* 1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
  2. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:
     1. cease to use the Authority Data;
     2. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
     3. delete from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data, Created IPR and Authority IPR and promptly certify to the Authority that it has completed such deletion;
     4. provide to the Authority, details of any Third Party IPR necessary for the delivery of the Services;
     5. return to the Authority such of the following as is in the Supplier's possession or control:
        1. all copies of any software licensed by the Authority to the Supplier under this Contract;
        2. all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
        3. any parts of the equipment which belongs to the Authority;
        4. any items that have been on-charged to the Authority, such as consumables; and
        5. all Authority Property issued to the Supplier under Clause 25 of this Contract (Authority Property). Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
        6. any sums prepaid by the Authority in respect of Services not Delivered by the Expiry Date;
     6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
        1. such information relating to the Services as remains in the possession or control of the Supplier; and
        2. such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph;
  3. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.
  4. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

ASSETS and SUB-CONTRACTS

* 1. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
     1. terminate, enter into or vary any Sub-Contract; or
     2. terminate, enter into or vary any licence for software in connection with the provision of Services.
  2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Schedule 10, the Authority shall provide written notice to the Supplier setting out which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the **“Transferring Contracts”**), in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.
  3. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
  4. The Authority shall:
     1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
     2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
  5. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
  6. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 9.3 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

SUPPLIER PERSONNEL

* 1. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 11 (Staff Transfer) shall apply.
  2. The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
  3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier Personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
  4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
  5. The Supplier shall not for a period of twelve (12) Months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-Contractor applies in response to a public advertisement of a vacancy.

CHARGES

* 1. Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 10 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

APPORTIONMENTS

* 1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
     1. the amounts shall be annualised and divided by 365 to reach a daily rate;
     2. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
     3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
  2. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.

12/08/2013

ANNEX 1: SCOPE OF TERMINATION ASSISTANCE

Scope of the Termination Assistance

The Termination Assistance to be provided by the Supplier shall include such of the following services as the Authority may specify:

* + 1. notifying the Sub-Contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
    2. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
    3. delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 Month period immediately prior to the commencement of the Termination Assistance;
    4. providing details of work volumes and staffing requirements over the 12 Month period immediately prior to the commencement of the Termination Assistance;
    5. with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
    6. providing the Authority with any problem logs which have not previously been provided to the Authority;
    7. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and rewriting and implementing these during and for a period of 12 Months after the Termination Assistance Period;
    8. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
    9. making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
    10. agreeing with the Authority a handover plan for all of the Supplier’s responsibilities as set out in the Security Management Plan;
    11. delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
    12. assisting with the loading, testing and implementation of the production databases;
    13. assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
    14. providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
    15. answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
    16. agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
    17. providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 Months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
        1. to information and documentation relating to the transferring services that is in the possession or control of the Supplier or its Sub-Contractors (and the Supplier agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
        2. following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-Contractors; and
    18. knowledge transfer services, including:
        1. transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
        2. providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
        3. providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-Contractors.

The Supplier shall:

* + 1. provide a documented plan relating to the training matters referred to in paragraph 1.1.9 for agreement by the Authority at the time of termination or expiry of the Contract;
    2. co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1.10, providing skills and expertise of a suitable standard; and
    3. fully co-operate in the execution of the Authority Data migration plan agreed pursuant to paragraph 1.1.16, providing skills and expertise of a reasonably acceptable standard.

To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to paragraph 1.1.18 shall include:

* + 1. copies of up-to-date procedures and operations manuals;
    2. product information;
    3. agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
    4. key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
    5. information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
    6. details of physical and logical security processes and tools which will be available to the Authority; and
    7. any relevant interface information.

During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

* + 1. any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 1.5 shall:
       1. sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable,

with the Authority and/or the Replacement Supplier paying the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

12/08/2013

SCHEDULE 11: STAFF TRANSFER

DEFINITIONS

* 1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “New Fair Deal” | the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date; |
| “Notified Sub-Contractor” | a Sub-Contractor identified in Schedule 16 (Key Sub-Contractors) to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date; |
| “Staffing Information” | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:   1. their ages, dates of commencement of employment or engagement, gender and place of work; 2. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; 3. the identity of the employer or relevant contracting Party; 4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; 5. their wages, salaries, bonuses and profit sharing arrangements as applicable; 6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; 7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); 8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; 9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and 10. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| “Supplier's Final Supplier Personnel List” | a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date; |
| “Supplier's Provisional Supplier Personnel List” | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |

INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

# PART A: NOT USED

# PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

(a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

(b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

(c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

(d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

(e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

(f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

(a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and to the Former Supplier; and

(b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority and the Former Supplier, within 6 months of the Contract Commencement Date.

2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Former Supplier in writing;

(f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.

3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority’s direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007, revised 2013;

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the Annex (Pensions) to this Schedule 11.

For the avoidance of doubt the pensions provisions in the Annex (Pensions) to Schedule 11 have been prepared on the basis that only statutory protection is required and that New Fair Deal does not apply.

# PART C: NOT USED

# PART D: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

(a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any partial termination of this Contract;

(c) the date which is 12 months before the end of the Contract Period; and

(d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor:

(a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

(b) the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

(a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

(b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

(e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Contract Period, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

(a) the numbers of employees engaged in providing the Services;

(b) the percentage of time spent by each employee engaged in providing the Services; and

(c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

(a) the most recent month's copy pay slip data;

(b) details of cumulative pay for tax and pension purposes;

(c) details of cumulative tax paid;

(d) tax code;

(e) details of any voluntary deductions from pay; and

(f) bank/building society account details for payroll purposes.

1.8 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with paragraphs 3 and 4 of the Annex (Pensions) to this Schedule 11.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

2.3 Subject to paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees; and/or

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

(d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(ii) in relation to any employee who is not identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Supplier’s failure, and/or Replacement Sub-Contractor’s failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier’s Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier’s Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

(a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

(b) the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in paragraph 2.5(b) has elapsed:

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier’s Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Supplier and/or any Sub-Contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-Contractor.

2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

(b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List ; and/or

(ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier’s Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

(f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

# ANNEX (PENSIONS) to SCHEDULE 11

DEFINITIONS

In thisAnnex (Pensions) to Schedule 11, the following definitions shall apply:

|  |  |
| --- | --- |
| “Retirement Benefits Scheme” | means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004; |

2. New employees and TRANSFERRING FORMER employees

The Supplier shall at all material times, and shall procure that any relevant Sub-Contractors shall at all material times, in respect of any Transferring Former Supplier Employees and any new employees who are engaged in the provision of the Services under this Contract or a Sub-Contract:

* + - * 1. provide a Retirement Benefits Scheme; and
        2. designate a pension arrangement which shall be a “qualifying scheme” for the purposes of the Supplier’s or relevant Sub-Contractor’s auto-enrolment obligations under the Pensions Act 2008

in each case, the terms of which satisfy the conditions in section 258 Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005, where applicable.

# 3. PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other to provide all information which the other Party may reasonably request concerning the matters referred to in this Annex (Pensions) to Schedule 11, and to supply the information as expeditiously as possible.

# 4. PENSION PRE-SERVICE TRANSFER OBLIGATIONS

The Supplier agrees that from the earliest of:

receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

receipt of the giving of notice of early termination or any partial termination of this Contract;

the date which is twelve (12) months before the end of the Contract Period; and

receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

that it shall not, and agrees to procure that each Sub‑Contractor shall not without the approval of the Authority (not to be unreasonably withheld or delayed) make, promise, propose or permit any material change the pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority.

12/08/2013

**SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE**

1. DEFINITIONS
   1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “CEDR” | 1. the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| “Counter Notice” | 1. has the meaning given to it in paragraph 6.2 of this Schedule; |
| “Exception” | 1. a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Contract or in the supply of the Services; |
| “Expert” | 1. the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule; and |
| “Mediation Notice” | 1. has the meaning given to it in paragraph 3.2 of this Schedule; |
| “Mediator” | 1. the independent third party appointed in accordance with paragraph 4.1 of this Schedule. |

INTRODUCTION

* 1. If a Dispute arises then:
     1. the Authority’s Contract Manager and the Supplier’s Contract Manager shall attempt in good faith to resolve the Dispute; and
     2. if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.
  2. The Dispute Notice shall set out:
     1. the material particulars of the Dispute;
     2. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
     3. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Schedule, the reason why.
  3. Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
  4. Subject to paragraph 3.2 of this Schedule, the Parties shall seek to resolve Disputes:
     1. first by commercial negotiation (as prescribed in paragraph 3 of this Schedule);
     2. then by mediation (as prescribed in paragraph 4 of this Schedule); and
     3. lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with Clause 0 of this Contract (Governing Law and Jurisdiction)).
  5. Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule.
  6. In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
  7. If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.6 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
     1. in paragraph 3.2.3, ten (10) Working Days;
     2. in paragraph 4.1, ten (10) Working Days;
     3. in paragraph 5.2, five (5) Working Days; and
     4. in paragraph 6.2, ten (10) Working Days.
  8. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passes, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

COMMERCIAL NEGOTIATIONS

* 1. Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between:
     1. the Authority’s Director of Research and Development Directorate; and
     2. the Supplier’s Accountable Officer.
  2. If:
     1. either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
     2. the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule; or
     3. the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice”**) in accordance with paragraph 4 of this Schedule.

MEDIATION

* 1. If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of the CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
  2. If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
  3. If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
  4. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

EXPERT DETERMINATION

* 1. If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with this Schedule, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute is referred to an Expert for determination.
  2. The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
  3. The Expert shall act on the following basis:
     1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
     2. the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
     3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
     4. any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
     5. the process shall be conducted in private and shall be confidential; and
     6. the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

ARBITRATION

* 1. The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule.
  2. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with Clause 0 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
  3. If:
     1. the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule shall apply;
     2. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 0 of this Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
     3. the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with Clause 0 of this Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
  4. In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule, the Parties hereby confirm that:
     1. all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule);
     2. the arbitration shall be administered by the LCIA;
     3. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
     4. if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
     5. the chair of the arbitral tribunal shall be British;
     6. the arbitration proceedings shall take place in London and in the English language; and
     7. the seat of the arbitration shall be London.

URGENT RELIEF

* 1. Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
     1. for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
     2. where compliance with paragraph 2.1 of this Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

12/08/2013

SCHEDULE 13: NOT USED

SCHEDULE 14: COMMERCIALLY SENSITIVE INFORMATION

INTRODUCTION

* 1. In this Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
  2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
  3. Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 28.5 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
| --- | --- | --- | --- |
| 1 | 16/03/2017 | Process diagrams, SOPs, work instructions and descriptions or illustrations of operational processes that are trade secrets or disclosure of which would prejudice the commercial interests of LGC or any other party. We  acknowledge that some SOPs were provided to support the Authority’s retendering the opportunity and accept  that a limited form of disclosure of these has been necessary as part of the tendering process. Other SOPs and supporting documents should be exempted from disclosure.  **Exemption (section of the Act):** Section 43 and Section 41.  **Detailed Reason for Application of Exemption**:  Disclosure prior to the end of the non-disclosure period could prejudice LGC’s operation and/or give competitors  access to company confidential information disclosed in confidence to the Authority. | For the duration of the base contract and any extension(s). |
| 2 | 16/03/2017 | LGC Prices, rates, discounts and initiatives.  **Exemption (section of the Act):** Section 43 and Section 41.  **Detailed Reason for Application of Exemption**:  LGC Prices, Rates discounts and initiatives. Disclosure prior to the end of the non-disclosure period could  prejudice LGC’s contract negotiations and/or give competitors an unfair advantage. We acknowledge that,  over time the sensitivity of the price information, and even the build-up of the model loses its sensitivity with  regard to the public interest argument. Our request is not intended to prevent the mandatory disclosure of the  Authority’s spend but to protect those aspects which constitute the composition of the price. A regime that  protects that element of the pricing for the duration of the contract and any extensions would be acceptable. | For the duration of the base contract and any  extension(s). |
| 3 | 16/03/2017 | Management information and management reports.  However, we agree that, subject to confidentiality obligations, the information may be disclosed (in full and un-redacted) to other government bodies at any time.  **Exemption (section of the Act):** Section 43 and Section 41.  **Detailed Reason for Application of Exemption:**  Disclosure of information prior to the end of the nondisclosure period gives competitors access to company  confidential information disclosed in confidence to the Authority. We acknowledge the impact of both the  commercial interest argument and the transparency agenda and will appropriately mark those elements of MI and Management Reports that should be exempted from disclosure. | In Perpetuity |
| 4 | 16/03/2017 | Staff Names and information, including but not limited to Organisation charts and CVs. Personal information which  if disclosed would be in breach of UK data protection legislation (note that other exemptions might also apply)2  **Exemption (section of the Act):** Section 41  **Detailed Reason for Application of Exemption**:  Personal information which if disclosed would be in breach of UK data protection legislation. Org charts which show the hierarchy and roles only are not sensitive; those which contain personal, identifying information such as staff names are considered to be  sensitive and need to be considered under Section 40(2) as well as Section 41. | In Perpetuity |

SCHEDULE 15: INSURANCE REQUIREMENTS

OBLIGATION TO MAINTAIN INSURANCES

* 1. Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the Contract Commencement Date.
  2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
  3. The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
  4. The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

GENERAL OBLIGATIONS

* 1. Without limiting the other provisions of this Contract, the Supplier shall:
     1. take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
     2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
     3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

FAILURE TO INSURE

* 1. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
  2. Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

EVIDENCE OF POLICIES

* 1. The Supplier shall upon the Contract Commencement Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

CANCELLATION

* 1. The Supplier shall notify the Authority in writing at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

INSURANCE CLAIMS

* 1. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
  2. Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of one thousand pounds (£1,000) relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
  3. Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
  4. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

Required Insurances

* 1. The Supplier shall, during the Contract Period and for a period of one year thereafter, effect and maintain in force at least the following insurance policies with reputable insurance companies to cover its potential liabilities in connection with this Contract:
     1. professional indemnity insurance with a minimum limit of indemnity of ten million pounds sterling (£10,000,000) per claim;
     2. public liability insurance with a minimum limit of ten million pounds sterling (£10,000,000) per claim; and
     3. employers’ liability insurance in respect of the Supplier’s employees with a minimum limit of ten million pounds sterling (£10,000,000) (or such higher minimum limit as required by Law from time to time) for claims arising from a single event or series of related events in a single year.

SCHEDULE 16: KEY SUB-CONTRACTORS

In accordance with Clause 23.2 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-Contractors listed below.

| **Name & Address of Sub-Contractor** | **Service performed for Contractor** |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |

SCHEDULE 17: GUARANTEE

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

**DEED OF GUARANTEE**

**THIS DEED OF GUARANTEE** is made the day of 20[ ]

**BETWEEN**:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of theGuarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details](**“Guarantor”**); in favour of

(2) [The Authority] whose principal office is at [insert address] (**“Beneficiary”**)

**WHEREAS**:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

(C) Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

Definitions and Interpretation

* 1. In this Deed of Guarantee:
     1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
     2. the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list]

["**Beneficiary**" means the Authority and "Beneficiaries" shall be construed accordingly;]

["**Contract**" means the agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;]

["**Guaranteed Agreement**" means Contract made between the Beneficiary and the Supplier on [insert date];]

["**Services**" has the meaning given in the Contract;]

|  |  |
| --- | --- |
|  |  |
| “Guaranteed Obligations” | 1. means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; |

references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

references to liability are to include any liability whether actual, contingent, present or future.

Guarantee and indemnity

The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

* + 1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
    2. as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

Demands and Notices

Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

* + 1. [Address of the Guarantor in England and Wales]
    2. [Facsimile Number]
    3. For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

* + 1. if delivered by hand, at the time of delivery; or
    2. if posted, at 10.00 a.m. on the second (2nd) Working Day after it was put into the post; or
    3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

Beneficiary's protections

The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

* + 1. it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
    2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
    3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
    4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary’s protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

* + 1. of subrogation and indemnity;
    2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier’s obligations; and
    3. to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

Deferral of rights

Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

* + 1. exercise any rights it may have to be indemnified by the Supplier;
    2. claim any contribution from any other guarantor of the Supplier’s obligations under the Guaranteed Agreement;
    3. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
    4. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
    5. claim any set‑off or counterclaim against the Supplier;

If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

* + 1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
    2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
    3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
       1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
       2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
       3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
    4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
    5. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

Payments and set-off

All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

Assignment

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Governing Law

This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

[Guidance Note: Include the following provision when dealing with the appointment of English process agent by a non-English incorporated Guarantor]

[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

SCHEDULE 18: VARIATION FORM

Subject matter of Variation:

……………………………………………………………………………………

Variation Form No:

……………………………………………………………………………………

BETWEEN:

|  |
| --- |
| **The Secretary of State for Health** ("**the Authority"**)  and  **[insert name]** (**"the Supplier"**) |

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

1. Words and expressions in this Variation shall have the meanings given to them in this Contract.
2. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.
3. 12/08/2013

Signed by an authorised signatory for and on behalf of the Authority

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

SCHEDULE 19: CONDUCT OF CLAIMS

1. INDEMNITIES

This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).

If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

Subject to paragraphs 1.5 and 2.2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

With respect to any Claim conducted by the Indemnifier pursuant to paragraph 1.3:

* + 1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
    2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
    3. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
    4. the Indemnifier shall conduct the Claim with all due diligence.

The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:

* + 1. the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 1.3;
    2. the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
    3. the Indemnifier fails to comply in any material respect with the provisions of paragraph 1.4.

SENSITIVE CLAIMS

With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a “**Sensitive Claim**”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

RECOVERY OF SUMS

If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

* + 1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
    2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

MITIGATION

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

SCHEDULE 20: TENDER

General

This Schedule 20 sets out the Supplier’s Tender including the Supplier’s responses to the technical and commercial criteria in the ITT.

In addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services to the Authority in accordance with the Tender.

See additional documents redacted in line with sections 40 and 43 of the FOIA