

DATED

21 April 2021

between

**PUBLIC HEALTH ENGLAND, AN EXECUTIVE AGENCY
OF THE DEPARTMENT OF HEALTH**

and

XIIMS LIMITED

THIS AGREEMENT is dated

21st April 2021

PARTIES:

- (1) Public Health England, an executive agency of the Department of Health with an address at Wellington House, 133-155 Waterloo Road, London SE1 8UG, United Kingdom (“**PHE**”);

AND

- (2) Xiims Ltd incorporated and registered in England and Wales with company number 8229304 whose registered office is at 48 Foxglove Way, Thatcham, Berkshire RG18 4DL (the “**Supplier**”).

WHEREAS:

- (A) PHE uses a bespoke business support website system that includes capabilities such as an eCommerce back office, website enquiry handling, content and contract management/bid system (together, the “**Insight System**”).
- (B) The Supplier is engaged in business offering services in relation to the maintenance and further development of the Insight System.
- (C) The Supplier agrees to perform the Services for the PHE as described herein.

In consideration of this Agreement, the Charges to be paid and the mutual rights and obligations of the parties, the parties agree as follows:

1. DEFINITIONS

- 1.1. In this Agreement the following words and expressions shall have the following meanings unless the context otherwise requires:

“**Acceptance**” means acceptance of those Deliverables which are identified in Schedule 2 as being subject to acceptance in accordance with Clause 6.1 and Schedule 1;

“**Achieve**” means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and “**Achieved**” and “**Achievement**” shall be construed accordingly;

“**Affiliate**” 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 with, that body corporate from time to time;

“**Agreement**” means this agreement made between PHE and the Supplier for the performance of the Services and all Schedules to this Agreement as the same may be amended, modified or supplemented from time to time;

“**Approval**” means the prior written consent of PHE and “**Approve**” and “**Approved**” shall be construed accordingly;

“**Approved Sub-Licensee**” means any of the following:

- (a) a Central Government Body;

- (b) any third party providing Services to a Central Government Body; and/or
- (c) 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 PHE;

“Business Day” means a day (other than a Saturday or Sunday or a public holiday) on which clearing banks are open for retail business in London;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change Control Procedure” means the change control procedure set out in Clause 166;

“Change Control Form” means the form set out in Schedule 5;

“Change in Law” means any change in Law which impacts on the supply of the Services and performance of this Agreement which comes into force after the Commencement Date;

“Charges” means the payments described in Schedule 4 to this Agreement payable by PHE to the Supplier for the full and proper performance of the Services by the Supplier of its obligations under this Agreement less any deductions;

“Commencement Date” means 1st June 2021;

“Comparable Supply” means the supply of Services to another customer of the Supplier that are the same or similar to the Services;

“Confidential Information” means PHE's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;;

“Critical Service Level Failure” means any instance of critical service level failure specified in Schedule 3;

“Data” means the data contained on paper, film or other type of media, together with all records, information and other material legally and beneficially owned and supplied by PHE, or their servants to the Supplier;

“Data Controller” has the meaning given in the Data Protection Legislation;

“Data Processor” has the meaning given in the Data Protection Legislation;

“Data Protection Legislation” means the Data Protection Act 1998 and/or the General Data Protection Regulation (Regulation (EU) 2016/679)) (as applicable);

“Data Subject” has the meaning given in the Data Protection Legislation;

“Data Subject Access Request” a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data;

“Default” means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to PHE;

“Defect” means any of the following:

- (a) any error, damage or defect in the manufacturing of a Deliverable;
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results;
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of PHE or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Agreement; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of PHE or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Agreement;

“Delay” means:

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

“Deliverable” 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 Agreement;

“Delivery” means, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by PHE of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Agreement and accepted by PHE and **“Deliver”** and **“Delivered”** shall be construed accordingly;

“Design Specification” means the accepted version of the design specification referred to in Schedule 2 as amended, extended or replaced by written agreement between the parties;

“Dispute” means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 24;

“Documentation” means all documentation as:

- (a) is required to be supplied by the Supplier to PHE under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by PHE to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

“Exit Management Plan” has the meaning given to the plan agreed pursuant to Clause 3.20;

“Extension Period” means extensions to the Term (ending no later than forty-eight (48) months from the Commencement Date) agreed in accordance with the Change Control Procedure;

“FOIA” means the Freedom of Information Act 2000;

“Force Majeure” shall mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, Supplier Personnel or any other failure in the Supplier's supply chain;

“General Change in Law” 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” 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;

“ICT Environment” means the PHE System and the Supplier System;

“ICT Policy” means PHE's ICT policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

“Impact Assessment” has the meaning given to it in Clause 16.3;

“Implementation Plan” means the plan set out in Schedule 2;

“Initial Term” means the period of 36 months from and including the Commencement Date;

“Insolvency Event” means the occurrence of an event or circumstance described in Clause 20.3.4;

“Intellectual Property” means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;

“Intellectual Property Rights” or **“IPR”** means:

- (a) 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 or other Intellectual Property;
- (b) 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
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPR Claim” 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 PHE in the fulfilment of its obligations under this Agreement;

“Key Sub-Contract” means each Sub-Contract with a Key Sub-Contractor;

“Key Sub-Contractor” means any Sub-Contractor:

- (a) listed in Schedule 6;
- (b) which, in the opinion of PHE, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement;

“Know-How” 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 Commencement Date;

“Law” means any law, statute, subordinate legislation within the meaning of section 20(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Losses” means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Milestone” means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;

“Milestone Date” means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;

“Milestone Payment” 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;

“New Release” means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

“Open Source Software” means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

“Other Supplier” means any supplier to PHE (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

“Performance Monitoring System” has the meaning given to it in Schedule 3;

“Performance Monitoring Reports” has the meaning given to it in Schedule 3;

“Personal Data” has the meaning given to it under the Data Protection Legislation;

“PHE Assets” means PHE’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to PHE and which is or may be used in connection with the provision of the Services;

“PHE Background IPR” means:

- (a) IPRs owned by PHE before the Commencement Date, including IPRs contained in any of PHE’s Know-How, documentation, processes and procedures;
- (b) IPRs created by PHE independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;

but excluding IPRs owned by PHE subsisting in PHE Software;

“PHE Cause” means any breach of the obligations of PHE or any other default, act, omission, negligence or statement of PHE, of its employees, servants, agents in connection with or in relation to the subject-matter of this Agreement and in respect of which PHE is liable to the Supplier;

“PHE Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any PHE Confidential Information, and which:
 - (i) are supplied to the Supplier by or on behalf of PHE; or
 - (ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement;or
- (b) any Personal Data for which PHE is the Data Controller;

“PHE Premises” means premises owned, controlled or occupied by PHE or an Affiliate which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);

“PHE Property” means the property, other than real property and IPR, including the PHE System issued or made available to the Supplier by PHE in connection with this Agreement;

“PHE’s Confidential Information” means:

- (a) 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 PHE (including all PHE Background IPR and Project Specific IPR);
- (b) 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 PHE’s attention or into PHE’s possession in connection with this Agreement; and
- (c) information derived from any of the above;

“PHE Software” means any software which is owned by or licensed to PHE and which is or will be used by the Supplier for the purposes of providing the Services;

“PHE System” means PHE's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by PHE or the Supplier in connection with this Agreement which is owned by or licensed to PHE by a third party and which interfaces with the Supplier System or which is necessary for PHE to receive the Services;

“Process” has the meaning given to it under the Data Protection Legislation and **“Processed”** and **“Processing”** shall be construed accordingly;

“Project Specific IPR” means:

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) IPR in or arising as a result of the performance of the Supplier’s obligations under this Agreement and all updates and amendments to the same;

but shall not include the Supplier Background IPR or the Specially Written Software;

“Replacement Services” means any services which are substantially similar to any of the Services and which PHE receives in substitution for any of the Services following the end of the Term, whether those services are provided by PHE internally and/or by any third party;

“Replacement Supplier” means any third party provider of Replacement Services appointed by or at the direction of PHE from time to time or where PHE is providing Replacement Services for its own account, shall also include PHE;

“Request for Information” has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

“Restricted Country” means:

- (a) any country outside the European Economic Area, and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

“Satisfaction Certificate” means the certificate, materially in the form of the document contained in Annex to Schedule 1, to be granted by PHE when the Supplier has Achieved a Milestone or a Test;

“Scope of Services” means the scope of services set out in Schedule 1;

“Security Policy” means PHE's security policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

“Service Failure” means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;

“Service Level Failure” means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;

“Service Level Performance Criteria” has the meaning given to it in Schedule 3;

“Service Level Performance Measure” shall be as set out against the relevant Service Level Performance Criterion in Schedule 3;

“Service Level Threshold” shall be as set out against the relevant Service Level Performance Criterion in Schedule 3;

“Service Levels” means any service levels applicable to the provision of the Services under this Agreement specified in Schedule 3;

“Services” means the services to be performed by the Supplier for PHE as more particularly set out in the Scope of Services and shall include the supply of the Deliverables and Work Products referred to in Schedule 2;

“Site” means:

- (a) any premises (including PHE Premises, the Supplier's premises or third party premises):
 - (i) 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; or
 - (ii) where any part of the Supplier System is situated; or
- (b) any physical interface with PHE System takes place;

“Software” means Specially Written Software, Supplier Software and Third Party Software;

“Software Supporting Materials” means any literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that the Supplier may deliver to PHE as part of a Service. The term “Materials” does not include either the Supplier's or third party's licensed software or other items available under their own license terms or agreements;

“Specific Change in Law” means a Change in Law that relates specifically to the business of PHE and which would not affect a Comparable Supply;

“Specially Written Software” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any

modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;

“Standards” means any:

- (a) 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;
- (b) standards detailed in the Scope of Services; or
- (c) relevant Government codes of practice and guidance applicable from time to time;

“Sub-Contract” means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier 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” means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to this Agreement or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

“Supplier Assets” means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding PHE Assets;

“Supplier Background IPR” means:

- (a) Intellectual Property Rights owned by the Supplier before the 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
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement,

but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

“Supplier Equipment” 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 PHE) in the performance of its obligations under this Agreement;

“Supplier Personnel” 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 Agreement;

“Supplier's Confidential Information” means:

- (a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;
- (b) 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 Agreement;

(c) information derived from any of the above;

"Supplier Software" means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for PHE to receive the benefit of and/or make use of the Services;

"Supplier System" means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the PHE System);

"Tender" means the final tender submitted by the Supplier to PHE by 24/01/2020;

"Term" means the period from the Commencement Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

"Test" means any tests required to be carried out pursuant to this Agreement as set out in the Test Strategy Plan or elsewhere in this Agreement and **"Tested"** shall be construed accordingly;

"Test Issues" means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Agreement;

"Test Strategy Plan" means a plan:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the achievement of Milestones,

"Third Party IPR" means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

"Third Party Software" 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);

"Undelivered Services" has the meaning given to it in Clause 3.12;

"Update" means, in relation to any Software and/or any Deliverable, a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;

"Upgrade" means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

"Variation" has the meaning given to it in Clause 16.1;

"Wilful Default" means actions undertaken by a party or its employees or sub-contractors with a malicious and/or deliberate intent to cause harm and/or to breach the terms of this Agreement; and

"Work Product" shall mean a document which is created that may be published for review, comment or information by PHE or the Supplier but will not be subject to Acceptance.

- 1.2. The headings in this Agreement are inserted only for convenience and shall not affect its construction.
- 1.3. Where appropriate words denoting a singular number also shall include the plural and vice versa.
- 1.4. Reference to any statute or statutory provision includes a reference to the statute or statutory provisions as from time to time amended, extended, consolidated or re-enacted.
- 1.5. References to “**writing**” or equivalent expressions includes a reference to e-mail, facsimile transmission or comparable means of communication.
- 1.6. The contents of the schedules form an integral part of this Agreement and shall have as full effect as if it incorporated in the body of this Agreement and the expressions “**this Agreement**” and the “**Agreement**” used in the schedules shall mean this Agreement and any reference to “**this Agreement**” shall be deemed to include the schedules.

2. APPOINTMENT OF SUPPLIER

- 2.1. The Supplier shall be appointed to perform the Services for the Term on the terms and conditions of this Agreement.
- 2.2. The appointment of the Supplier to perform the Services shall be non-exclusive. For the avoidance of doubt PHE shall be entitled to engage third parties to provide services the same (or substantially the same) as the Services and, subject to Clause 18.1, the Supplier shall be entitled to provide the same (or substantially the same) services as the Services to third parties.
- 2.3. The Supplier is and will remain an independent Supplier. It is expressly agreed by the parties that neither the Supplier nor any Supplier Personnel are employees or commercial agents of PHE and that this Agreement is a contract for services.
- 2.4. The Supplier shall not at any time hold itself out as an employee or commercial agent of PHE and the Supplier shall ensure that no employees, servants or agents of the Supplier hold themselves out as such.

3. THE SERVICES

- 3.1. The Supplier acknowledges and agrees that PHE relies on the skill and judgment of the Supplier.
- 3.2. The Supplier shall ensure that the Services:
 - 3.2.1. comply in all respects with PHE’s description of the Services in Schedule 1 (or elsewhere in this Agreement) and the details outlined in the proposed services offered by the supplier in Schedule 1; and
 - 3.2.2. are supplied in accordance with the provisions of this Agreement or the Tender.
- 3.3. The Supplier shall perform its obligations under this Agreement in accordance with:
 - 3.3.1. all applicable Law;
 - 3.3.2. Good Industry Practice;
 - 3.3.3. the Standards;
 - 3.3.4. the Security Policy;

- 3.3.5. the ICT Policy (if so required by PHE).
- 3.4. The Supplier shall perform its obligations under this Agreement in accordance with all applicable equality laws and PHE's equality and diversity policy as provided to the Supplier from time to time.
- 3.5. The Supplier shall supply the Services in accordance with PHE's environmental policy as provided to the Supplier from time to time.
- 3.6. The Supplier shall comply with, and shall ensure that Supplier Personnel shall comply with, the provisions of:
 - 3.6.1. the Official Secrets Acts 1911 to 1989; and
 - 3.6.2. section 182 of the Finance Act 1989.
- 3.7. The Supplier shall:
 - 3.7.1. at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
 - 3.7.2. subject to Clause 16, obtain, and maintain throughout the duration of this Agreement, 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;
 - 3.7.3. ensure that:
 - 3.7.3.1. the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of PHE and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify PHE before the release of any new Supplier Software or Upgrade;
 - 3.7.3.2. all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - 3.7.3.3. any products or services recommended or otherwise specified by the Supplier for use by PHE in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of PHE as specified by PHE at the time of entering into this Agreement and subject to any subsequent Variation;
 - 3.7.3.4. the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with PHE); and
 - 3.7.3.5. the Services are fully compatible with any PHE Software, Customer System, Customer Property or Customer Assets described in Schedule 1 (or elsewhere in this Agreement) or otherwise used by the Supplier in connection with this Agreement;

- 3.7.4. minimise any disruption to the Services, the ICT Environment and/or PHE's operations when providing the Services;
- 3.7.5. ensure that any Documentation and training provided by the Supplier to PHE are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 3.7.6. co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, prior to the expiry or termination of the Term, to enable the timely transition of the Services (or any of them) to PHE and/or to any Replacement Supplier;
- 3.7.7. assign to PHE, 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 PHE, 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 PHE may notify from time to time to the Supplier;
- 3.7.8. provide PHE with such assistance as PHE may reasonably require during the Term in respect of the supply of the Services;
- 3.7.9. deliver the Services in a proportionate and efficient manner;
- 3.7.10. ensure that neither it, nor any of its Affiliates, embarrasses PHE or otherwise brings PHE into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in PHE, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and
- 3.7.11. gather, collate and provide such information and co-operation as PHE may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement.
- 3.8. 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.
- 3.9. The Supplier shall provide the Services on the date(s) specified in this Agreement and the Milestone Dates (if any).
- 3.10. Except where otherwise provided in this Agreement, the Supplier shall provide the Services to PHE through the Supplier Personnel at the Sites.
- 3.11. PHE may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not PHE Premises, PHE may carry out such inspection and examination during normal business hours and on reasonable notice.
- 3.12. The Supplier shall be solely responsible for:
 - 3.12.1. paying all salaries, wages, benefits and other compensation that the Supplier Personnel may be entitled to receive whether in connection with the performance of the Services or otherwise. The Supplier shall meet all UK national minimum wage requirements;

- 3.12.2. paying and reimbursing Supplier Personnel for all related travel, housing and other expenses that such Supplier Personnel may be entitled to receive in connection with performing the Services; and
- 3.12.3. withholding and paying any applicable payroll taxes and contributions, including but not limited to state and local income taxes, unemployment tax, worker's compensation insurance, disability taxes, social insurance, pension contributions or any similar obligations.
- 3.13. In the event that any of the Services are not Delivered in accordance with Clauses 3.1 to 3.3 ("**Undelivered Services**"), PHE, without prejudice to any other rights and remedies of PHE howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 3.14. PHE may, at its discretion and without prejudice to any other rights and remedies of PHE howsoever arising, deem the failure to comply with Clauses 3.1 to 3.3 and meet the relevant Milestone Date (if any) to be a material Default.
- 3.15. The Supplier warrants to PHE for a period of ninety (90) days from the completion date of PHE acceptance testing that all components of the Specially Written Software shall:
 - 3.15.1. be free from material design and programming errors;
 - 3.15.2. perform in all material respects in accordance with the relevant specifications contained in Schedule 1 (Scope of Services) and Documentation; and
 - 3.15.3. not infringe any Intellectual Property Rights.
- 3.16. Subject to Clause 17 and without prejudice to any other rights and remedies of PHE howsoever arising, the Supplier shall, as soon as reasonably possible:
 - 3.16.1. remedy any breach of its obligations in this Clause 3 within three (3) Business Days of becoming aware of the relevant Default or being notified of the Default by PHE or within such other time period as may be agreed with PHE (taking into account the nature of the breach that has occurred); and
 - 3.16.2. meet all the costs of, and incidental to, the performance of such remedial work.
- 3.17. The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Services, notwithstanding:
 - 3.17.1. any withholding or deduction by PHE of any sum due to the Supplier pursuant to the exercise of a right of PHE to such withholding or deduction under this Agreement;
 - 3.17.2. the existence of an unresolved Dispute; and/or
 - 3.17.3. any failure by PHE to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 20.7 for failure by PHE to pay undisputed sums.
- 3.18. Each party agrees to comply with their respective responsibilities as set out in Schedule 2.
- 3.19. The procedure for Acceptance shall apply in respect of the Deliverables identified in Schedule 2 as being subject to Acceptance.

- 3.20. The Supplier is required to propose a draft exit management plan for review and comment by PHE and the parties shall then confirm an agreed version of the exit management plan (the “**Exit Management Plan**”). In the event of early termination of this Agreement for any reason, the provisions of the Exit Management Plan shall apply.

4. SERVICE LEVELS

- 4.1. The parties shall comply with the provisions of Schedule 3.
- 4.2. The Supplier shall at all times during the Term provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 4.3. The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of PHE and that it shall entitle PHE to the rights set out in the provisions of Clause 20.3 of this Agreement.

5. CRITICAL SERVICE LEVEL FAILURE

- 5.1. On the occurrence of a Critical Service Level Failure PHE shall be entitled, on written notice to the Supplier, to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service for the relevant period provided that the operation of this Clause 5.1 shall be without prejudice to the right of PHE to terminate this Agreement and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.
- 5.2. The Supplier:
- 5.2.1. agrees that the application of Clause 5.1 is commercially justifiable where a Critical Service Level Failure occurs; and
- 5.2.2. acknowledges that it has taken legal advice on the application of Clause 5.1 and has had the opportunity to price for that risk when calculating the Charges.

6. TESTING

- 6.1. The parties shall comply with the testing provisions set out in Schedule 1.

7. SUB-CONTRACTING

- 7.1. The Supplier shall not subcontract any aspects of the Services to any third party without the prior written consent of PHE, provided that such consent shall not be required where it uses an Affiliate in the provision of the Services or uses a subcontractor for incidental activities that are not material to the Services. For the avoidance of doubt the Supplier shall at all times remain fully liable for all acts and omissions of the Supplier Personnel and any authorised sub-contractor pursuant to this Agreement as if such acts or omissions were the acts or omissions of the Supplier.

8. SUPPLIER PERSONNEL

- 8.1. Notwithstanding the foregoing, the Supplier shall, if so requested by PHE acting reasonably, cease to use any particular Supplier Personnel in the provision of the Services to PHE.
- 8.2. If it is necessary to replace any Supplier Personnel, the Supplier shall, after notifying PHE of that person's removal, arrange for a replacement by a person of comparable competence who is approved by PHE (such approval shall not be unreasonably withheld).

- 8.3. At any time during the course of this Agreement, PHE reserves the right to request a replacement of a Supplier Personnel if such a person is not performing satisfactorily. The parties will then meet and discuss the reasons for such request and will agree a resolution which may include removal of the Supplier Personnel. The cost of such replacement shall be borne by the Supplier who shall provide a replacement in accordance with Clause 8.2 above.

9. ACCESS TO PREMISES

- 9.1. Supplier Personnel who require admission to PHE Premises or other premises in connection with the performance of the Services shall dress in a manner appropriate to the services being performed and in keeping with the professional standards expected by PHE. Supplier Personnel who must attend PHE Premises or other premises must dress in keeping with PHE's established dress codes.
- 9.2. PHE reserves the right to refuse to admit or to remove any Supplier Personnel whose presence in PHE Premises would (in the reasonable opinion of PHE) be undesirable. The reasonable exclusion of any such individual shall not relieve the Supplier from the performance of its obligations under this Agreement.
- 9.3. Subject always to the requirements of applicable data protection legislation PHE may for bona fide operational reasons, request and the Supplier shall provide a résumé of the professional qualifications and relevant experience of Supplier Personnel who require admission to PHE Premises to perform the Services. The résumé shall specify the capacities in which such Supplier Personnel are concerned with the Services and shall also give such other particulars as PHE may reasonably require.
- 9.4. The Supplier shall promptly notify PHE of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. PHE shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the PHE Premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 9.5. The Supplier shall:
- 9.5.1. comply with all of PHE's health and safety measures while on PHE Premises; and
 - 9.5.2. notify PHE immediately in the event of any incident occurring in the performance of its obligations under this Agreement on PHE Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 9.6. Failure by the Supplier to comply with the provisions of Clause 9.3 within a reasonable time of written request from PHE will entitle PHE to refuse admission to PHE Premises to any such person.
- 9.7. The Supplier shall be liable for death or bodily injury caused to persons or damage to real property or tangible personal property caused by the wilful or negligent acts or omissions of the Supplier's Personnel while attending PHE Premises to perform the Services.

10. EQUIPMENT

- 10.1. All equipment required to complete the Services will be supplied by the Supplier.
- 10.2. PHE will provide the technical infrastructure, access and environment for the supplier to fulfil the contractual requirements.

11. CHARGES AND EXPENSES

- 11.1. In consideration of the provision of the Services, PHE shall pay to the Supplier the Charges as set out in Schedule 4.
- 11.2. The Charges stated in this Agreement are, unless otherwise stated, stated exclusive of Value Added Tax (“VAT”). VAT shall be payable at the rate and in the manner prescribed by law from time to time. The Supplier shall, upon request, provide such information, as may be reasonably required by PHE, regarding the amount of VAT charged on invoices submitted.
- 11.3. Payment shall become due 30 days following receipt of the Supplier’s properly due and undisputed invoice and all such other documentation as may be reasonably required by PHE to support the invoice charges. PHE, without prejudice to any other rights and remedies under this Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 11.4. Where payment has not been received within 30 days of receipt of a properly due and undisputed invoice, PHE may be liable for late payment fees. Such late payment charges shall be calculated in accordance with the rate of interest as defined by Late Payment of Commercial Debts (Interest) Act 1998.
- 11.5. Each invoice submitted by the Supplier to PHE shall be a valid VAT invoice and shall contain the following information:
 - 11.5.1. invoice number and date;
 - 11.5.2. purchase order number if relevant;
 - 11.5.3. the Charges claimed;
 - 11.5.4. the amount of VAT payable; and
 - 11.5.5. the total amount payable.
- 11.6. The Supplier shall send all invoices to the following address Accounts Payable, PHE Porton, Manor Farm Road, Porton Wiltshire SP4 0JGJGor payables@phe.gov.uk. Invoices shall be paid in accordance with Clauses 11.3 and 11.5 above. Invoices will be submitted monthly in arrears.
- 11.7. Payment by PHE shall be without prejudice to any claims or rights which PHE may have against the Supplier and shall not constitute any admission by PHE as to the performance by the Supplier of its obligations under this Agreement.
- 11.8. Save as expressly provided for in this Agreement, or where agreed pursuant to the Change Control Procedure, the Supplier shall not be reimbursed for any expenses whatsoever. Any expenses likely to be incurred by the Supplier in performing the Services have been taken into account by the Supplier in calculating and agreeing the Charges.
- 11.9. If any sum of money is recoverable from or payable by the Supplier under this Agreement (including any sum which the Supplier is liable to pay to PHE in respect of any breach of this Agreement), that sum may be deducted unilaterally by PHE from any sum then due, or which may come due, to the Supplier under this Agreement or under any other agreement or contract with PHE. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against PHE in order to justify withholding payment of any such amount in whole or in part.

12. CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

- 12.1. The Supplier shall not, except as authorised in writing by PHE, disclose, publish or otherwise reveal to any person, persons or companies any Confidential Information. The Supplier shall keep confidential, for disclosure only to PHE, all Confidential Information disclosed to it or to which it has access as a result of performing the Services. The Supplier shall not knowingly use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to PHE.
- 12.2. The obligations of confidence referred to in this Clause 12 shall not apply to any Confidential Information, documents or other information which:
 - 12.2.1. is published in the public domain prior to the receipt of such Confidential Information or other information by the Supplier;
 - 12.2.2. is or becomes publicly available on a non-confidential basis through no fault of the Supplier;
 - 12.2.3. is received in good faith by the Supplier from a third party who, on reasonable enquiry by the Supplier claims to have no obligations of confidence to PHE in respect of it and who imposes no obligations of confidence upon the Supplier; or
 - 12.2.4. is already in the Supplier's possession without an obligation of confidentiality or is independently developed by the Supplier without reference to the Confidential Information.
- 12.3. The obligations of the parties under this Clause 12 shall survive for 5 years following termination or expiry of this Agreement.
- 12.4. The Supplier shall not during the term of this Agreement make or permit to be made otherwise than for the benefit of PHE any notes or memoranda relating to any matter concerning any of the dealings or affairs of PHE and nor shall the Supplier either during the term of this Agreement or thereafter use or permit to be used any such notes or memoranda otherwise than for the benefit of PHE.
- 12.5. The Supplier shall ensure that all of its Supplier Personnel, employees or agents involved in the performance of the Services or who have access to Confidential Information are bound by restrictions of confidentiality no less restrictive than those in this Agreement. The Supplier shall use all commercially reasonable efforts, not less than the diligence it would use in protecting its own confidential information, to protect the Confidential Information, for example by enforcement of confidentiality restrictions.
- 12.6. 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 Agreement is not Confidential Information and the Supplier hereby gives its consent for PHE to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Agreement agreed from time to time. PHE may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.7. The Supplier shall not:
 - 12.7.1. make any press announcements or publicise this Agreement or its contents in any way; or

- 12.7.2. use PHE's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of PHE, which shall not be unreasonably withheld or delayed.

13. FREEDOM OF INFORMATION

- 13.1. The Supplier acknowledges that PHE is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
 - 13.1.1. provide all necessary assistance and cooperation as reasonably requested by PHE to enable PHE to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 13.1.2. transfer to PHE all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
 - 13.1.3. provide PHE with a copy of all information belonging to PHE requested in the Request for Information which is in its possession or control in the form that PHE requires within 5 Business Days (or such other period as PHE may reasonably specify) of PHE's request for such information; and
 - 13.1.4. not respond directly to a Request for Information unless authorised in writing to do so by PHE.
- 13.2. The Supplier acknowledges that PHE may be required under the FOIA and the Environmental Information Regulations 2004 to disclose information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 13.3. Notwithstanding any other provision in the Agreement, PHE shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

14. DATA PROTECTION

- 14.1. Both parties shall observe their respective obligations set out in the Data Protection Legislation as may be amended, modified or consolidated, together with any other applicable legislation in respect of data protection. In particular the Supplier undertakes that it will comply, and will cause its employees, agents and sub-contractors to comply, with the Data Protection Legislation and all applicable data protection laws in connection with the performance of its obligations as a data processor under this Agreement.
- 14.2. With respect to the parties' rights and obligations under this Agreement, the parties acknowledge that PHE is a Data Controller and that the Supplier is a Data Processor.
- 14.3. The Supplier shall:
 - 14.3.1. Process the Personal Data only in accordance with instructions from PHE to perform its obligations under this Agreement;

- 14.3.2. 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 14.6 to 14.13;
- 14.3.3. 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 PHE (save where such disclosure or transfer is specifically authorised under this Agreement);
- 14.3.4. take all 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:
 - 14.3.4.1. are aware of and comply with the Supplier's duties under this Clause 14 and Clause 12;
 - 14.3.4.2. are informed of the confidential nature of Personal Data and do not publish, disclose or divulge any Personal Data to any third party unless directed in writing to do so by PHE or as otherwise permitted by this Agreement; and
 - 14.3.4.3. have undergone adequate training in the use, care, protection and handling of Personal Data;
- 14.3.5. notify PHE within 5 Business Days if it receives:
 - 14.3.5.1. from a Data Subject (or third party on their behalf):
 - i. a Data Subject Access Request (or purported Data Subject Access Request);
 - ii. a request to rectify, block or erase any Personal Data; or
 - iii. any other request, complaint or communication relating to PHE's obligations under the Data Protection Legislation;
 - 14.3.5.2. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - 14.3.5.3. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable law;
- 14.3.6. provide PHE with full cooperation and assistance (within the timescales reasonably required by PHE) in relation to any complaint, communication or request made as referred to in Clause 14.3.5, including by promptly providing:
 - 14.3.6.1. PHE with full details and copies of the complaint, communication or request;
 - 14.3.6.2. where applicable, such assistance as is reasonably requested by PHE to enable PHE to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - 14.3.6.3. PHE, on request by PHE, with any Personal Data it holds in relation to a Data Subject; and

- 14.3.7. if requested by PHE, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 14 and provide to PHE copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 14.4. The Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the 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:
 - 14.4.1. the Supplier shall submit a recommendation for a variation to PHE which, if PHE agrees to such recommendation, shall be dealt with in accordance with the Change Control Procedure and Clauses 14.4.2 to 14.4.4;
 - 14.4.2. the Supplier shall set out in its recommendation for a variation details of the following:
 - 14.4.2.1. the Personal Data which will be transferred to and/or Processed in any Restricted Country;
 - 14.4.2.2. the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in;
 - 14.4.2.3. any sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
 - 14.4.2.4. 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 PHE's compliance with the Data Protection Legislation;
 - 14.4.3. in providing and evaluating the recommendation for a variation, the parties shall ensure that they have regard to and comply with then-current PHE, 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 Country; and
 - 14.4.4. the Supplier shall comply with such other instructions and shall carry out such other actions as PHE may notify in writing, including:
 - 14.4.4.1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Agreement or a separate data processing agreement between the parties; and
 - 14.4.4.2. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:
 - i. a direct data processing agreement with PHE on such terms as may be required by PHE; or

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

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

- 14.5. The Supplier shall use its reasonable endeavours to assist PHE to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause PHE to breach any of PHE's obligations under the Data Protection Legislation to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 14.6. The Supplier shall not delete or remove any proprietary notices contained within or relating to PHE Data.
- 14.7. The Supplier shall not store, copy, disclose, or use PHE Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by PHE.
- 14.8. To the extent that PHE Data is held and/or processed by the Supplier, the Supplier shall supply that PHE Data to PHE as requested by PHE in an appropriate format.
- 14.9. The Supplier shall preserve the integrity of PHE Data and prevent the corruption or loss of PHE Data at all times that the relevant PHE Data is under its control or the control of any sub-contractor.
- 14.10. The Supplier shall perform secure back-ups of all PHE Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to PHE (or to such other person as PHE may direct) at all times upon request and are delivered to PHE at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the parties).
- 14.11. The Supplier shall ensure that any system on which the Supplier holds any PHE Data, including back-up data, is a secure system that complies with PHE security requirements and any security requirements set out in Schedule 1.
- 14.12. If PHE Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, PHE may:
 - 14.12.1. require the Supplier (at the Supplier's expense) to restore or procure the restoration of PHE Data and the Supplier shall do so as soon as practicable but not later than 5 Business Days from the date of receipt of PHE's notice; and/or
 - 14.12.2. itself restore or procure the restoration of PHE Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 14.13. If at any time the Supplier suspects or has reason to believe that PHE Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify PHE immediately and inform PHE of the remedial action the Supplier proposes to take.

15. INTELLECTUAL PROPERTY

- 15.1. Save as expressly granted elsewhere under this Agreement:

- 15.1.1. PHE shall retain all intellectual rights to the Insight System and all project specific software and any website design elements (including all coding in any such software and elements) completed during the commission and after the completion of this Agreement. The Supplier shall not own any coding arising under this Agreement and, subject to Clause 15.4, shall have no licence rights to the same following the termination or expiry of the Term;
- 15.1.2. The Supplier may choose to incorporate into the Insight System applications software components authored and owned by third-parties provided that the Supplier shall be required to obtain on behalf of and for PHE, licences of any such incorporated Third Party Intellectual Property and Third Party Software;
- 15.1.3. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of PHE or its licensors, including the:
 - 15.1.3.1. PHE Software;
 - 15.1.3.2. PHE Background IPR; and
 - 15.1.3.3. PHE Data.
- 15.2. Where the Supplier acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 15.1, it shall assign in writing such Intellectual Property Rights as it has acquired to PHE on the request of PHE (whenever made).
- 15.3. 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.
- 15.4. PHE hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use PHE Software, PHE Background IPR and PHE Data solely to the extent necessary for providing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
 - 15.4.1. any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 12; and
 - 15.4.2. the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than PHE.
- 15.5. The licence granted pursuant to Clause 15.4 and any sub-licence granted by the Supplier in accordance with Clause 15.4 shall terminate automatically on termination or expiry of the Term and the Supplier shall:
 - 15.5.1. immediately cease all use of PHE Software, PHE Background IPR and PHE Data (as the case may be);
 - 15.5.2. at the discretion of PHE, return or destroy documents and other tangible materials that contain any of PHE Software, PHE Background IPR and PHE Data, provided that if PHE 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 PHE Software, PHE Background IPR and PHE Data (as the case may be); and
 - 15.5.3. ensure, so far as reasonably practicable, that any PHE Software, PHE Background IPR and PHE Data that are held in electronic, digital or other machine-readable form ceases

to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such PHE Software, PHE Background IPR and/or PHE Data.

16. VARIATION

- 16.1 Subject to the provisions of this Clause 16 and of Schedule 4, either party may request a variation to this Agreement provided that such variation does not amount to a material change of this Agreement within the meaning of the Public Contracts Regulations 2015 and the Law. Such a change once implemented is hereinafter called a “**Variation**”.
- 16.2 A party may request a Variation by completing and sending the Change Control 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.
- 16.3 PHE 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:
- 16.3.1 details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Agreement;
 - 16.3.2 details of the cost of implementing the proposed Variation;
 - 16.3.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either party and any alteration to the working practices of either party;
 - 16.3.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 16.3.5 such other information as PHE may reasonably request in (or in response to) the Variation request.
- 16.4 Where PHE has requested the Variation and the Supplier can show that the Impact Assessment required resources other than those ordinarily deployed in the provision of the Services PHE shall pay any reasonable costs incurred by the Supplier in producing the Impact Assessment. The parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- 16.5 Subject to Clause 16.4, the receiving party shall respond to the request within the time limits specified in the Change Control Form. Such time limits shall be reasonable and ultimately at the discretion of PHE having regard to the nature of the Services and the proposed Variation.
- 16.6 In the event that:
- 16.6.1 the Supplier is unable to agree to or provide the Variation; and/or
 - 16.6.2 the parties are unable to agree a variation to the Charges that may be included in a request of a Variation or response to it as a consequence thereof,

PHE may:

- (a) agree to continue to perform its obligations under this Agreement without the Variation; or
 - (b) terminate this Agreement with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Agreement or where the Supplier can show evidence of substantial work being carried out to fulfil the Agreement, 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.
- 16.7 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 Agreement.
- 16.8 The Supplier shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Charges as the result of a:
 - 16.8.1 General Change in Law;
 - 16.8.2 Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
 - 16.8.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 16.8.2), the Supplier shall:
 - (a) notify PHE as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
 - (b) provide PHE with evidence:
 - (i) 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;
 - (ii) that the Variation being requested does not result in increased profit for the Supplier and is evidenced by a full breakdown of cost impacts on the provision of the Services; as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 16.9 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.8.2) shall be implemented in accordance with the Change Control Procedure.

17 IPR INDEMNITY

- 17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify PHE, and keep PHE indemnified, against all Losses incurred by, awarded against or agreed to be paid by PHE arising from an IPR Claim.
- 17.2 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:
- 17.2.1 procure for PHE the right to continue using the relevant item which is subject to the IPR Claim; or
 - 17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the ICT Environment;
 - (c) there is no additional cost to PHE; and
 - (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2.1 or to modify or replace an item pursuant to Clause 17.2.2, but this has not avoided or resolved the IPR Claim, then:
- 17.3.1 PHE may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - 17.3.2 without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18 COVENANTS, WARRANTIES AND INDEMNITIES

- 18.1 Upon the termination of this Agreement, the parties shall not (without prior written consent of the other party) for a period of 6 months thereafter:
- 18.1.1 solicit the services of or entice away from the other party or engage, with any person who is or was an employee or executive director or a senior manager of the other party at any time during the 12 month period immediately preceding the date on which the Services terminated; and/or
 - 18.1.2 solicit the custom of or entice away from PHE the custom or business of any person, firm or company with whom the Supplier or Supplier Personnel had contact by virtue of this Agreement and who is or was a customer or supplier of PHE at any time during the 12 month period immediately preceding the date on which this Agreement with PHE terminated.
- 18.2 The Supplier acknowledges and agrees that the benefit of each and every covenant set out above are separate and severable and enforceable by PHE accordingly and the Supplier hereby

acknowledges that the restrictions set out in this Agreement are reasonable and valid and have been agreed as part of the commercial agreement reached by the parties.

- 18.3 In the event that any of the restrictions contained in this Clause 18 are adjudged by a court of competent jurisdiction to go beyond what is reasonable, in all the circumstances, for the protection of the legitimate interests of PHE but would be adjudged reasonable if any particular restriction or restrictions, or part thereof, were deleted in any manner, then the restrictions in question shall apply with such deletions as may be decided by a Court of competent jurisdiction, without affecting the remaining provisions.
- 18.4 The Supplier warrants, represents and undertakes that:
- 18.4.1 it shall perform the Services with due skill, care and diligence, in accordance with Good Industry Practice, and that all Supplier Personnel involved in performing the Services will be suitably experienced, qualified and competent;
 - 18.4.2 it shall provide the Deliverables as set out in Schedule 2;
 - 18.4.3 the Deliverables shall perform in accordance with the Design Specification. For a period of 180 days from the date of Acceptance, the Supplier shall correct any failure of a Deliverable to comply with the Design Specification, which is not otherwise covered by the support arrangements agreed by the parties, at no charge to PHE;
 - 18.4.4 to the extent that the Supplier Personnel have access to PHE's computer systems in performing the Services under this Agreement, the Supplier warrants that it shall not (and shall procure that its sub-contractors and the Supplier Personnel do not) knowingly or recklessly introduce, by any medium, any Malicious Software into those systems. The Supplier shall use virus scanners updated with the then-most current virus signatures and data sets to scan all such media immediately prior to introducing it to any PHE computer system. The Supplier further warrants that each of the Deliverables shall at the date of delivery to PHE be free from Malicious Software which can be identified using the then-most current virus signatures and data sets. If Malicious Software is found to have been introduced into PHE's computer systems by the Supplier, or by its sub-contractors or the Supplier Personnel, or if any Deliverable is found to have contained Malicious Software at the time of delivery, as a result of a breach by the Supplier of any its obligations under this clause, the Supplier shall co-operate with PHE to the extent reasonably required to reduce the adverse effects on PHE of the Malicious Software including the effects of any loss of operational efficiency and/or loss of data;
 - 18.4.5 it has and shall maintain a valid VAT number, tax registration and tax clearance certificates for the Term.
- 18.5 Each party warrants and represents to the other that it has full capacity and authority and all necessary consents to enter into this Agreement and that this Agreement has been signed by a duly authorised representative.
- 18.6 The Supplier shall indemnify PHE and keep PHE indemnified in respect of any claim by any State agency or similar body for any income tax, VAT, social insurance or comparable taxes or duties (including associated costs, penalties and/or interest) arising from the payment of the Charges to the Supplier and/or claims in respect of such matters relating to Supplier Personnel.
- 18.7 Subject to Clauses 18.9 to 18.11, the Supplier's entire liability for all claims in the aggregate arising from or related to the Services or otherwise arising under this Agreement will not exceed the greater of:

- 18.7.1 one million pounds (£1,000,000); and
- 18.7.2 150% of the Charges paid and payable for the Services.
- 18.8 Subject to Clauses 18.9 to 18.11, PHE's entire liability for all claims in the aggregate arising from or related to the performance of its obligations or otherwise arising under this Agreement will not exceed 100% of the Charges paid for the Services.
- 18.9 The following amounts are not subject to the caps on damages set out in clauses 18.7 or 18.8 above:
 - 18.9.1 the IPR indemnity referred to in Clause 17;
 - 18.9.2 amounts recoverable pursuant to Clause 22.3;
 - 18.9.3 damages for bodily injury (including death) and damage to real property and tangible personal property for which a party is legally liable;
 - 18.9.4 fraud;
 - 18.9.5 any other matter which, by law, may not be excluded or limited; or
 - 18.9.6 Wilful Default (subject to the limitation on liability set out in Clause 18.10).
- 18.10 Neither party's liability for all claims in the aggregate arising from Wilful Default shall exceed 200% of the Charges paid or payable for the Services, which limitation on liability shall be separate to the liability caps set out in Clauses 18.7 and 18.8. For the avoidance of doubt, the cap set out in this Clause 18.10 shall be the sole recourse for liability for Wilful Default.
- 18.11 Except as expressly required by law without the possibility of contractual waiver, under no circumstances shall either party, or their respective sub-contractors, be liable for any of the following even if informed of their possibility:
 - 18.11.1 loss of, or damage to, Data subject to Clause 14.12;
 - 18.11.2 special, indirect, or consequential damages;
 - 18.11.3 loss of profits;
 - 18.11.4 loss of business;
 - 18.11.5 loss of revenue;
 - 18.11.6 loss of or damage to goodwill; and/or
 - 18.11.7 loss of savings (whether anticipated or otherwise).

19 INSURANCES

- 19.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (“**Required Insurances**”). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the performance of the Services by the Supplier, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 19.2 The Supplier shall give PHE, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 19.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, PHE may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 19.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement.
- 19.5 Following expiry or earlier termination of this Agreement, the Supplier shall continue to make appropriate insurance provisions to cover activities under this Agreement for a minimum of six years.

20 TERMINATION

- 20.1 Termination of this Agreement howsoever arising shall be without prejudice to any provision intended to operate after the termination of this Agreement.
- 20.2 PHE may at any time during the Term (including any extension thereof) give 3 months’ notice in writing terminating this Agreement. In such circumstances PHE shall pay the Supplier for all Services provided up to the date of termination and for reasonable unavoidable costs incurred by the Supplier as a result of early termination by PHE. The amount of such costs shall be agreed by the parties acting in good faith and evidenced by an objectively justifiable breakdown of costs.
- 20.3 This Agreement may be terminated by PHE immediately by notice in writing to the Supplier if the Supplier (or any Supplier Personnel):
- 20.3.1 commits a material Default of the terms or provisions of this Agreement that cannot be remedied or if capable of remedy has not been remedied by the Supplier within such reasonable period as PHE may specify;
 - 20.3.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 20.3.3 is convicted of any criminal offence or commits any act of dishonesty;
 - 20.3.4 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action

(to any of the actions detailed in this Clause 20.3.4) in consequence of debt in any jurisdiction;

20.3.5 fails to comply with legal obligations in the fields of environmental, social or labour law; or

20.3.6 acts in a manner that in the reasonable opinion of PHE creates a conflict between the interests of the Supplier and PHE.

20.4 Upon the termination of this Agreement:

20.4.1 the Exit Management Plan shall apply;

20.4.2 for whatever reason or at any time at PHE's request, the Supplier shall promptly deliver up to PHE all property belonging to PHE in the possession or control of the Supplier and all of the Confidential Information, correspondence, documents (including computerised documents and disks) and all copies, summaries and/or notes of the contents or any part thereof and in the possession, power, custody or control of either of them at that time without retaining copies and the Supplier shall not thereafter utilise or exploit the Confidential Information, in any way whatsoever;

20.4.3 for whatever reason, PHE shall have the right to utilise and exploit the Confidential Information and the Data, in any way whatsoever without restriction and in particular but without prejudice to the generality of the foregoing without further payment to the Supplier.

20.5 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other and all provisions which are expressed to survive this Agreement shall remain in force and effect.

20.6 For the avoidance of doubt, in the event of the termination of this Agreement PHE shall discharge the Charges incurred up to the date of termination only and the Supplier shall not have any other claim or demand against PHE in respect of the termination or any matter arising after termination.

20.7 The supplier may at any time during the Term (including any extension thereof) give 3 months' notice in writing terminating this Agreement. This Agreement may be terminated by the supplier immediately by notice in writing to the PHE if PHE (or any PHE Personnel):

20.7.1 if PHE fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £5800 and such amount remains outstanding 40 Business Days after the receipt by the Authority of a notice of non-payment from the Supplier.

20.7.2 commits a material Default of the terms or provisions of this Agreement that cannot be remedied or if capable of remedy has not been remedied by PHE;

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

20.7.4 is convicted of any criminal offence or commits any act of dishonesty;

20.7.5 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect

of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this Clause 20.3.4) in consequence of debt in any jurisdiction;

- 20.7.6 fails to comply with legal obligations in the fields of environmental, social or labour law;

21 FORCE MAJEURE

- 21.1 Subject to the remaining provisions of this Clause 21, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure.
- 21.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure, such party shall:
- 21.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 21.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - 21.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 21.3 A party cannot claim relief if the Force Majeure is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 21.4 The Supplier cannot claim relief if the Force Majeure is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 21.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure and to facilitate the continued performance of this Agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure in accordance with Good Industry Practice.
- 21.6 The affected party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure unless agreed otherwise by the parties.
- 21.7 Either party may, during the continuance of any Force Majeure, terminate this Agreement by written notice to the other party if a Force Majeure occurs that affects all or a substantial part of the Services and which continues for more than 60 Business Days.

22 PREVENTION OF FRAUD AND CORRUPTION

- 22.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.
- 22.2 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Supplier Personnel and the Supplier (including its shareholders, members and directors) in connection with this Agreement and shall notify PHE immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 22.3 If the Supplier or Supplier Personnel engage in conduct prohibited by Clause 22.1 or commits fraud in relation to this Agreement or any other contract with the Crown (including PHE) PHE may:
- 22.3.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by PHE resulting from the termination, including the cost reasonably incurred by PHE of making other arrangements for the supply of the Services and any additional expenditure incurred by PHE throughout the remainder of the Term but for the early termination of this Agreement; or
- 22.3.2 recover in full from the Supplier any other loss sustained by PHE in consequence of any breach of this Clause.

23 NOTICES

- 23.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to Clause 23.3, e-mail to the address of the relevant party set out in Clause 23.4 or such other address as that party may from time to time notify to the other party in accordance with this Clause 23.
- 23.2 Notices served in accordance with this Clause 23 shall be deemed served on the Business Day of delivery provided delivery is before 5.00pm on a Business Day. Otherwise delivery shall be deemed to occur on the next Business Day. An email shall be deemed delivered when sent unless an error message is received.
- 23.3 Notices under Clauses 20 (Termination) and 21 (Force Majeure) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Clause 23.1.
- 23.4 The address for notices of the parties are:
- 23.4.1 PHE:
- 23.4.1.1 REDACTED Procurement, PHE Colindale, 61 Colindale Avenue, London, NW9 5EQ
- 23.4.1.2 Attention: REDACTED
- 23.4.1.3 Email: REDACTED
- 23.4.2 Supplier:
- 23.4.2.1 REDACTED 1, Xiims Ltd, 48 Foxglove Way, Thatcham, Berkshire, RG18 4DL
- 23.4.2.2 Attention: REDACTED
- 23.4.2.3 Email: REDACTED

24 DISPUTE RESOLUTION

- 24.1 Any Dispute arising out of or in connection with this Agreement shall be referred at first instance to the PHE Project Manager and the Supplier Project Manager who shall endeavour in good faith to resolve the Dispute.
- 24.2 In the event that the Dispute cannot be resolved by such persons within ten (10) Business Days of referral of the Dispute to them, the matter will then be referred to PHE's [*role to be confirmed*] (or any replacement appointed from time to time) and the Supplier's Director who will also endeavour in good faith to resolve the Dispute.
- 24.3 In the event that the Dispute cannot be resolved by such persons within ten (10) Business Days of referral of the Dispute to them, the matter will then be referred to PHE's [*role to be confirmed*] (or any replacement appointed from time to time) and the Supplier's Director who will also endeavour in good faith to resolve the Dispute.
- 24.4 In the event that the Dispute cannot be resolved between such persons within ten (10) Business Days of referral of the matter to them, either party shall be entitled to refer the Dispute to mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") procedures then in force. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation, but in the event that the parties are unable to agree on a choice of mediator within ten (10) Business Days of the date of service of such notice, the parties shall accept a mediator nominated by CEDR. Each party shall bear its own costs in respect of the mediation.
- 24.5 Nothing in this Agreement shall prevent either party from seeking injunctive or other relief in a court of law to protect or enforce its legal rights.

25 GENERAL PROVISIONS

- 25.1 This Agreement, together with its Schedules, contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Clause 25.1 shall exclude liability for fraud or fraudulent misrepresentation.
- 25.2 If there is any inconsistency between the terms in the Schedules and the provisions of the main body of this Agreement, the provisions of the main body of this Agreement shall prevail.
- 25.3 This Agreement cannot be amended, modified, varied or supplemented except in writing signed by a duly authorised representative of both the parties.
- 25.4 This Agreement shall be assignable in whole or in part by PHE but shall not be assignable by the Supplier without the express written consent of PHE, save that assignment of this Agreement, in whole or in part, to an Affiliate of the Supplier does not require the consent of PHE provided that reasonable prior notice of the assignment to the Affiliate is given to PHE and PHE is reasonably satisfied that the Affiliate has adequate financial and other resources to perform the Supplier's obligations under this Agreement.
- 25.5 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

- 25.6 A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.
- 25.7 The rights of either party will not be prejudiced or restricted by any indulgence or forbearance extended to the other party, and no waiver by either party in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by either party in exercising any rights or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy by such a party prejudice its further exercise or the exercise of any other right or remedy by that party.
- 25.8 The provisions of this Agreement and the rights and remedies of the parties are cumulative and without prejudice and in addition to any rights or remedies which a party may have at law or in equity. No exercise by a party of any one right or remedy under this Agreement, at law or in equity shall (save to the extent, if any, provided expressly in this Agreement, at law or in equity) operate so as to hinder or prevent the exercise the exercise by it by any other such right or remedy.
- 25.9 Each of the provisions in this Agreement are distinct and severable, and if any provision, or part of a provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority, it shall to that extent be deemed not to be part of this Agreement and the enforceability, legality and validity of the remainder of this Agreement will not be affected.
- 25.10 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall constitute one and the same instrument.

26 GOVERNING LAW AND JURISDICTION

- 26.1 This Agreement shall in all respects be construed in accordance with the laws of England and Wales and subject to the provisions of clause 24 the parties to this Agreement submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1

Scope of Services

191 PHE UK Radon Migration

The provision and commissioning of 3rd party services such as credit card taking, is outside the scope of this contract.

SCHEDULE 2

Timetable and Deliverables

The contract will commence on 21/04/2021. The deliverables are specified within the contract documents.

SCHEDULE 3

Service Levels and Performance Monitoring

The supplier will provide a quarterly report containing the Maintenance and Development KPI data specified below;

Maintenance

1. The service delivery standards in the contract specification are being met or exceeded.
2. Service delivery times, where stated, are being met or exceeded.
3. No failure to meet the response times set out in the contract
4. Number of issues raised – reported quarterly
5. Number of issues resolved – reported quarterly
6. Average issue resolution time – reported quarterly
7. Service availability (but only if they are responsible for the service operations)
8. Incidents - Critical business, Degraded Service, General issue and response within the given threshold
9. Problem management - as above
10. Proactive feedback with suggestions for improvement
11. Respond appropriately to penetration tests

Development

1. User satisfaction (if possible / measurable)
2. Quality of software releases (number of bugs etc.)
3. Evidence improvements to optimize workflow
4. Streamline website/Insight content management
5. Evidence that guidance from NCSC on best practice is continually implemented
6. Evidence that the requirements of GDPR are satisfied

SCHEDULE 4

Charges

The supplier will complete the project requirements as specified within the contract over the period for the total sum of £91740 + VAT (including 10% contingency)

Total £83400 + VAT
Recommended contingency 10% £8340 + VAT
Total including contingency £91740 + VAT

This will be invoiced in equal payments following the schedule.

Month	Month	Billing milestone	Amount £
June 2021	1		
July 2021	2	1	REDACTED
August 2021	3		REDACTED
September 2021	4	2	REDACTED
October 2021	5		REDACTED
November 2021	6	3	REDACTED
December 2021	7		REDACTED
January 2022	8	4	REDACTED
February 2022	9		REDACTED
March 2022	10	5	REDACTED
April 2022	11		REDACTED
May 2022	12	6	REDACTED
June 2022	13		REDACTED
July 2022	14	7	REDACTED

SCHEDULE 5

Change Control Form



Variation of Contract
Template.docx

SCHEDULE 6

Key Sub-Contractors

Sub-Contractors will not be used during the life cycle of this contract

Signed for and on behalf of
**PUBLIC HEALTH ENGLAND, AN
EXECUTIVE AGENCY OF THE
DEPARTMENT OF HEALTH**

Signature:

REDACTED

Name (block capitals): REDACTED

Position: REDACTED

Date: 21/04/2021

Signed for and on behalf of
Xiims Limited

Signature:

REDACTED

Name (block capitals): REDACTED

Position: REDACTED

Date: 21/04/2021