

# Conditions of Call-Off Contract for the Provision of Services

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<b>The Authority</b>	<b>The Secretary of State for Health and Social Care</b> as part of the Crown through the UK Health Security Agency of <b>Nobel House, 17 Smith Square, London, SW1P 3HX</b>
<b>The Contractor</b>	Sodexo Limited which is a company registered in England and Wales under company number <b>00842846</b> and whose registered office is at <b>One Southampton Row, London, WC1B 5HA</b>
<b>Date</b>	May 2023

## 1 Background

The Authority has made a Direct Award to the Contractor, calling from a Framework Agreement put in place by the Secretary of State for Health and Social Care for the provision of testing services ("**Services**").

## 2 The Call-Off Contract

- 2.1 This Call-Off Contract is made on the date set out above subject to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Contractor undertake to comply with the provisions of the Schedules in the performance of this Call-Off Contract.
- 2.2 The Contractor shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.
- 2.3 The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

### Schedules

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Definitions and Interpretations
<b>Schedule 4</b>	Specification
<b>Schedule 5</b>	Contractor's Proposals
<b>Schedule 6</b>	Pricing
<b>Schedule 7</b>	Service Levels, Service Credits, and Performance Monitoring
<b>Schedule 8</b>	Commercially Sensitive Information
<b>Schedule 9</b>	Variation Form
<b>Schedule 10</b>	Staff Transfer
<b>Schedule 11</b>	Key Personnel
<b>Schedule 12</b>	Milestones
<b>Schedule 13</b>	Processing, Personal Data and Data Subjects
<b>Schedule 14</b>	Exit Services
<b>Schedule 15</b>	Business Continuity and Disaster Recovery

**Signed by the authorised representative of THE CONTRACTOR**

Signature:	[REDACTED]
Name:	[REDACTED]
Position:	[REDACTED]

**Signed by the authorised representative of THE AUTHORITY**

Signature:	[REDACTED]
Name:	[REDACTED]
Position:	[REDACTED]

## Schedule 1 - Key Provisions

### Standard Key Provisions

#### **1 Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 16 of this Schedule 1 shall only apply to this Call-Off Contract where they have been checked and information completed as applicable.
- 1.3 The Additional Key Provisions at Clauses 17 to 19 of this Schedule 1 shall apply to this Contract.

#### **2 Term**

- 2.1 This Call-Off Contract shall be deemed to have commenced on the Commencement Date. The Term of this Call-Off Contract was due to expire on 31 May 2023, but the Authority served one month's notice to terminate this Call-Off Contract which was deemed served on 14 March 2023 with a request to cease provision of the Services on 30 March 2023. Therefore the Contractor shall cease providing the Services at 23:59 on 30 March 2023 (unless an earlier date is agreed by the parties in writing) and the Term of this Call-off Contract shall expire at 23:59 on 14 April 2023. The Authority agrees that it shall be responsible for paying all costs reasonably incurred by the Contractor in connection with this Call-Off Contract up to the time of expiry of the Term (including all costs of Supplier Personnel notice periods) plus the Contractor's margin in accordance with Schedule 6.

#### **3 Authority Representative and Contractor Representative**

- 3.1 The contract managers at the commencement of this Call-Off Contract are:

- 3.1.1 **for the Authority:**

[REDACTED]

- 3.1.2 **for the Contractor:**

[REDACTED]

#### **4 Names and addresses for notices**

- 4.1 Notices served under this Call-Off Contract are to be delivered to:

- 4.1.1 **for the Authority:**

[REDACTED]  
[REDACTED]

- 4.1.2 **for the Contractor:**

[REDACTED]  
[REDACTED]

## 5 Order of precedence

- 5.1 Subject always to Clause 1.3 of Schedule 3, in the event of any conflict between any parts of this Call-Off Contract the order of precedence shall be:
- 5.1.1 Schedule 1 (Key Provisions);
  - 5.1.2 Schedule 4 (Specification);
  - 5.1.3 Schedule 5 (Contractor's Proposals);
  - 5.1.4 Schedule 2 (General Terms and Conditions);
  - 5.1.5 Schedule 8 (Commercially Sensitive Information);
  - 5.1.6 Schedule 10 (Staff Transfer);
  - 5.1.7 Schedule 3 (Definitions and Interpretations); and
  - 5.1.8 the order in which all subsequent Schedules, if any, appear.

## 6 Application of TUPE as to the provision of Services

- 6.1 The Parties agree that at the commencement of the provision of the Service by the Contractor, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Contractor and the provisions in Part B of Schedule 10 shall apply.

### Optional Key Provisions

- 7 **Implementation phase** ☒ (only applicable to the Call-Off Contract if this box is checked and the Schedule inserted)

- 7.1 Prior to commencement of delivery of the Services, there is an implementation phase.

- 8 **Services Commencement Date (where the Services are to start at a date after the Commencement Date)** ☒ (only applicable to the Call-Off Contract if this box is checked and the date is inserted in Clause 8.1 of this Schedule 1)

- 8.1 The Actual Services Commencement Date was 14:00 GMT on 9 January 2023.

- 9 **Different levels and/or types of insurance** ☒ (only applicable to the Call-Off Contract if this box is checked and the table sets out the requirements)

- 9.1 The Contractor shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
Employer's Liability	£5 million pounds each and every claim
Public Liability	£5 million pounds each and every claim
Clinical Negligence	Not required. For the avoidance of doubt, Clauses 21.4 to 21.7 of Schedule 2 shall not apply to this Call-Off Contract.

Type of insurance required	Minimum cover
Cyber Liability Insurance	Not required.

**10 Inclusion of a Change Control Process** ☐ (only applicable to the Call-Off Contract if this box is checked and the Schedule inserted)

- 10.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in this Clause 10.
- 10.2 Changes to the method of delivery of the Specification, and any adjustments to the Monthly Charge consequent to such changes, and any changes to the Monthly Charge as a consequence of changes to the Real Living Wage, may be agreed by the parties via email from an authorised representative or contract manager.
- 10.3 Subject to the provisions of this Clause 10, either Party may request a variation to the Call-Off Contract provided that such variation does not amount to a substantial modification of the Call-Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 10.4 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 10.5 Where the Authority has so specified on receipt of a Variation Form from the Contractor, the Contractor shall carry out an impact assessment of the Variation on the Services ("**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
  - 10.5.1 details of the impact of the proposed Variation on the Services and the Contractor's ability to meet its other obligations under the Contract;
  - 10.5.2 details of the cost of implementing the proposed Variation;
  - 10.5.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Monthly Charge, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - 10.5.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - 10.5.5 such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 10.6 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 10.7 Subject to Clause 10.4 of this Schedule 1, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 10.8 In the event that:

- 10.8.1 the Contractor is unable to agree to or provide the Variation; and/or
- 10.8.2 the Parties are unable to agree a change to the Monthly Charge, the matter shall be dealt with under the dispute resolution procedure set out at Clause 43 (Dispute Resolution) of Schedule 2.
- 10.9 If the Parties agree the Variation, the Contractor shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
- 10.10 Within five (5) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Call-Off Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Call-Off Contract from the Contractor the Authority shall review such updated Call-Off Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Call-Off Contract is approved. Following approval the Contractor shall provide to the Authority such further copies of the updated Call-Off Contract as the Authority may from time to time request.
- 10.11 Subject to Clause 10.12 to 10.14, during the Term the Authority may, at its absolute discretion, add or remove any number of individual Premises (or any part(s) of such Premises) from the scope of this Call-Off Contract.
- 10.12 Where the Authority elects to exercise its right pursuant to Clause 10.11, the addition or removal of any Premises (or any part(s) of such Premises) shall be implemented on the following basis:
- 10.12.1 the Authority shall be entitled to add or remove any Premises (or any part(s) of a such Premises) on not less than ten (10) calendar days' written notice or such other period of time as may be agreed between the Authority and the Contractor;
- 10.12.2 the Contractor shall not have any right to reject the addition or removal of one or more Premises (or any part(s) of such Premises) from the Call-Off Contract;
- 10.12.3 any impact on the Monthly Charge shall be calculated in accordance with the provisions set out in Annex 1 to Schedule 6; and
- 10.12.4 the Authority shall have no liability to the Contractor in respect of any costs incurred by the Contractor as a result of the removal of one (1) or more Premises (or any part(s) of such Premises) in accordance with this Clause 10.
- 10.13 Where any Premises (or any part(s) of such Premises) are removed from the scope of this Call-Off Contract pursuant to this Clause 10 the Contractor must adhere to the exit requirements stated within Schedule 14 (Exit Services) or as otherwise agreed between the Authority and Contractor.
- 10.14 For the avoidance of doubt, the removal of any number of Premises (or any part(s) of such Premises) from the scope of this Call-Off Contract in accordance with this Clause 10 shall not constitute termination of this Call-Off Contract.

**11 Guarantee** ☐ (only applicable to the Call-Off Contract if this box is checked)

- 11.1 Promptly following the execution of this Contract, the Contractor shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process

followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

**12 Service Credit Cap** ☐ (only applicable to the Call-Off Contract if this box is checked).

12.1 The Service Credit Cap shall be eight per cent (8%) of the Monthly Charge.

**13 Measures to promote tax compliance** ☐ (only applicable to the Call-Off Contract if this box is checked)

13.1 The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clauses 8.2 and 24.3.6 of Schedule 2, together with the associated definitions in Schedule 3, shall apply.

**14 Not Used**

**15 Not Used**

**16 Supply Chain Visibility** ☐ (only applicable to the Call-Off Contract if this box is checked)

*Visibility of Sub-Contract Opportunities in the Supply Chain*

16.1 The Contractor shall:

16.1.1 subject to Clause 16.4, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of twenty five thousand pounds (£25,000) that arise during the Term;

16.1.2 within ninety (90) days of awarding a Sub-Contract to a Sub-contractor, update the notice on Contract Finder with details of the successful Sub-contractor;

16.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

16.1.4 provide reports on the information at Clause 16.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and

16.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

16.2 Each advert referred to in Clause 16.1.1 of this Schedule 1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

16.3 The obligation on the Contractor set out at Clause 16.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

16.4 Notwithstanding Clause 16.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Contractor on Contracts Finder.

*Visibility of Supply Chain Spend*

16.5 In addition to any other management information requirements set out in the Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports ("SME



**Management Information Reports**”) to the Relevant Authority which incorporates the data described in the Supply Chain Information Report Template which is:

- 16.5.1 the total contract revenue received directly on the Contract;
  - 16.5.2 the total value of sub-contracted revenues under the Call-Off Contract (including revenues for non-SMEs/non-VCSEs); and
  - 16.5.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 16.6 The SME Management Information Reports shall be provided by the Contractor in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Authority from time to time. The Contractor agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Clause 16.5.1 – 16.5.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant Authority agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.
- 16.7 The Contractor further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

## **Additional Key Provisions**

### **17 Authority’s obligations**

- 17.1 The Authority shall comply with its obligations set out in Schedule 4 and Schedule 5.
- 17.2 The Authority shall be responsible for all collection and removal of waste at the Premises and shall fulfil these obligations in accordance with the document entitled “NTP Waste Management SOP v3.0 20220719.pdf” embedded in Schedule 4.
- 17.3 The Authority shall provide all cleaning equipment and consumables required by the Contractor for the performance of the Services and shall provide COSHH and MSDS information in respect of all chemical products provided.
- 17.4 The Authority:
  - 17.4.1 shall be solely responsible for notifying the Contractor of the required ratio for those holding permanent Heathrow Airport Airside ID Passes (“**Permanent Passes**”) under the Heathrow Airport ID Pass Scheme (the “**Pass Scheme**”) to those holding temporary Heathrow Airport Airside ID Passes (Visitor Passes and Temporary Employment Passes, both as defined below) under the Pass Scheme, and for notifying the Contractor immediately if there are any changes to this ratio;
  - 17.4.2 warrants that it is a member of the Pass Scheme, has appointed a Nominated Officer and Authorised Signatory under the Pass Scheme and shall be solely responsible (at the Authority’s cost) for preparing and submitting applications to Heathrow Airport for temporary visitor passes (“**Visitor Passes**”) in respect of all Contractor Personnel, for assuring itself of the suitability and integrity of the Contractor Personnel for this purpose, for providing all training to Contractor Personnel required to be given to Pass-holders regarding airside protocol and requirements under the Pass Scheme and for complying with the terms and conditions of the Pass Scheme (including the Heathrow Airport ID Pass Standard

2021) and applicable Law in the course of fulfilling its obligations under this Clause 17.4.2;

- 17.4.3 shall provide an adequate number, as requested by the Contractor, of personnel of the Authority who hold Permanent Passes to escort Contractor Personnel in accordance with the ratio requirements referenced in Clause 17.4.1 above.
- 17.5 The Contractor shall have no liability for any failure to comply with its obligations under this Call-Off Contract to the extent such failure results from a failure of the Authority to comply with its obligations set out in this Clause 17 of Schedule 1. The Contractor shall not be deemed to be in breach of the terms of this Call-Off Contract in respect of any failure to comply with its obligations to the extent they arise from the Contractor being unable to locate and engage a sufficient number of Supplier Personnel holding the necessary passes under the Pass Scheme.
- 17.6 The Authority will be responsible for the clinical governance relating to the Services and will notify the Contractor of the clinical governance requirements for the Services.
- 17.7 The Authority shall indemnify and expenses incurred by, or awarded against, the Authority as a result of any breach of its obligations under this Clause 17.

## **18 Contractor's obligations (Airside ID Passes)**

- 18.1 Without prejudice to clause 17 of this Schedule 1:
- 18.1.1 the Contractor shall be responsible for obtaining temporary employment Heathrow Airport Airside ID Passes ("**Temporary Employment Passes**") for up to six Contractor Personnel (for management staff, supervisors and translators employed by the Contractor only) to be used once their Visitor Passes have expired; and
- 18.1.2 the remainder of the Contractor Personnel shall be agency workers and the agencies providing those workers shall be responsible for obtaining Temporary Employment Passes for those agency workers once their Visitor Passes expire.

## **19 Subcontractors**

- 19.1 The Authority hereby authorises the Contractor to engage and use the services of third party employment agencies in the performance of the Services and consents to the use of the Sub-contractors set out in Schedule 5 (Contractor's Proposals). Clause 22.5.3 of Schedule 2 shall not apply to this Call-Off Contract.

## **20 Clinical negligence**

- 20.1 The Authority acknowledges and agrees that the Services do not include any clinical services and that the Contractor shall not have any liability for clinical negligence under this Call-Off Contract.

## **21 Performance Monitoring**

- 21.1 Clause 4.1 of Schedule 2 will not apply to this Call-Off Contract and shall be deemed deleted in its entirety.
- 21.2 Clause 5 of Schedule 2 will not apply to this Call-Off Contract and shall be deemed deleted in its entirety.

**22 Casual workers**

- 22.1 For the avoidance of doubt and notwithstanding Clause 1.1 of Part C of Schedule 10 or paragraph 3.5.2 of Schedule 4, the Contractor shall be permitted to use casual workers and agency workers (including those on zero-hours contracts) to provide the Services.

**23 Supplier Personnel**

- 23.1 The Authority hereby acknowledges and agrees that the Supplier shall have a period of six (6) weeks starting on the Actual Services Commencement Date in which to comply with the requirements of Clauses 10.2 to 10.4 of Schedule 2. The results of these checks shall be notified to the Authority only if expressly requested by the Authority.

**24 Invoicing**

- 24.1 The Authority acknowledges that no invoice has yet been raised and the Contractor shall be entitled to raise invoices for amounts due under this Call-Off Contract following signature of this Call-Off Contract (which may be invoiced in instalments if the Contractor so chooses).

## Schedule 2 - General Terms and Conditions

### 1 PROVISION OF SERVICES

- 1.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
  - 1.1.1 promptly and in accordance with any Milestones and any other time limits as may be set out in this Call-Off Contract;
  - 1.1.2 in accordance with all other provisions of this Call-Off Contract;
  - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
  - 1.1.4 in accordance with the Law;
  - 1.1.5 in accordance with the Anti-slavery Policy; and
  - 1.1.6 in accordance with Good Industry Practice.
- 1.2 The Authority, or a nominated third party acting on behalf of the Authority, may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 1.3 Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan.
- 1.4 The Contractor shall commence delivery of the Services on the Services Commencement Date.
- 1.5 The Contractor shall comply fully with its obligations set out in the Specification and the Contractor's Proposals.

The Contractor shall comply fully with the Exit Services as set out in

- 1.6 Schedule 14 of this Call-Off Contract.
- 1.7 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Call-Off Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Authority.
- 1.8 The Contractor shall notify the Authority as soon as it becomes aware of:
  - 1.8.1 any breach, or potential breach, of the Anti-slavery Policy; or
  - 1.8.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; or
  - 1.8.3 Personal Data breach; or
  - 1.8.4 security incident relating to Authority Data.
- 1.9 If required by the Authority, the Contractor shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy.

## **2 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

- 2.1 The Contractor shall comply with the obligations set out in Schedule 15 of this Call-Off Contract.

## **3 MONTHLY CHARGE**

- 3.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contractor the Monthly Charge in accordance with Clause 4 (Payment and VAT) of this Schedule 2.
- 3.2 The Authority shall, in addition to the Monthly Charge and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 3.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the Call-Off Contract and payable by the Authority to the Contractor in addition to the Monthly Charge. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Clause 15 (Recovery of Sums Due) of this Schedule 2.
- 3.4 The Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)) in respect of the Authority's obligation to accept unstructured electronic invoices from the Contractor where and as required under that procurement policy note (as amended from time to time).

#### **4 PAYMENT AND VAT**

- 4.1 Where the Contractor submits an invoice to the Authority in accordance with Clause 4.4 of this Schedule 2, the Contractor shall also supply with the invoice the Performance Monitoring Reports required under Schedule 7 (Service Levels, Service Credits and Performance Monitoring), and the Authority will consider and verify that invoice in a timely fashion and in any event within twenty one (21) days.
- 4.2 The Authority shall pay the Contractor any sums due under any undisputed invoice no later than a period of thirty (30) days from the date of invoice.
- 4.3 Where the Authority fails to comply with Clause 4.1 of this Schedule 2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2 after twenty one (21) days has passed, notwithstanding the Authority's right to audit such invoices at a later date.
- 4.4 The Contractor shall submit an invoice to the Authority Monthly in arrears. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice. Where Ancillary Labour Costs is claimed, all claims must comply with the provisions set out in Clause 2 of Schedule 6 and must be accompanied by appropriate receipts to cover the total amount claimed.
- 4.5 The Authority shall be entitled to withhold payment due under Clause 4 (Payment and VAT) of this Schedule 2 for so long as the Contractor, in the Authority's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 22.11 of this Schedule 2. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.
- 4.6 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 4.7 For the purposes of Clause 4.6, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

#### **VAT**

- 4.8 The Contractor shall add VAT to the Monthly Charge at the prevailing rate in accordance with applicable law.
- 4.9 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 4.9 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 4.10 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Call-Off Contract under Clause 24 (Termination on Default) of this Schedule 2 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly

invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.11 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under the Contract, the Contractor shall:
- 4.11.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 4.11.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Contractor or any Contractor Personnel.
- 4.12 In the event that any one of the Contractor Personnel is a Worker who receives consideration relating to the Services, then, in addition to its obligations under Clause 4.9 of this Schedule 2, the Contractor shall ensure that its contract with the Worker contains the following requirements:
- 4.12.1 that the Authority may, at any time during the Term, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 4.11 of this Schedule 2, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
- 4.12.2 that the Worker's contract may be terminated at the Authority's request if:
- a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.12.1 of this Schedule 2; and/or
- b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 4.11 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and
- 4.12.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **5 SERVICE LEVELS AND SERVICE CREDITS**

- 5.1 The Parties shall comply with the provisions of Schedule 7 (Service Levels, Service Credits and Performance Monitoring).
- 5.2 The Contractor shall, at all times, provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.
- 5.3 The Contractor acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in the provisions of Schedule 7 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.

- 5.4 The Contractor acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Contractor's failure to meet any Service Level.
- 5.5 A Service Credit shall be the Authority's exclusive financial remedy for a Service Level Failure except where:
- 5.5.1 the Service Level Failure:
- a) has arisen due to a Prohibited Act or wilful Default by the Contractor or any Contractor Personnel; and
  - b) results in the corruption or loss of any Authority Data and/or the Authority being required to make a compensation payment to one or more third parties, attributable to the Contractor or any Contractor Personnel; and/or
- 5.5.2 the Authority is otherwise entitled to or does terminate this Call-Off Contract pursuant to Clause 24 (Termination on Default) of this Contract.
- 5.6 The Authority may, on giving the Contractor at least one (1) Month's notice, change the Weighting of any Service Level and the Contractor shall not be entitled to object to, or increase the Monthly Charge as a result of such changes, provided that:
- 5.6.1 in adjusting the Weightings of any Service Level the agreed levels for Service Credits which may arise for each Service Level Failure should reflect the same drivers and methodology used to determine those elements at the time of entering into this Contract, and the risk of incurring Service Credits should not be substantively changed as a consequence of such adjustments;
- 5.6.2 the principal purpose for making the adjustment is to reflect changes in the Authority's requirements for the Services and/or priorities or to reflect changing industry standards; and
- 5.6.3 there is no change to the Service Credit Cap.
- 5.7 The Authority may, on giving the Contractor at least one (1) Month's notice, add or remove any Service Level and the Contractor shall not be entitled to object to, or increase the Monthly Charge as a result of such changes, provided that:
- 5.7.1 the principal purpose for making the adjustment is to reflect changes in the Authority's requirements for the Services and/or priorities or to reflect changing industry standards; and
- 5.7.2 the risk of incurring Service Credits should not be substantively changed as a consequence of such adjustments.
- 5.8 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Contractor's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Authority specifies otherwise, the Contractor shall obtain approval of the relevant measuring and monitoring tools and procedures prior to using the same.



## **6 MILESTONES**

- 6.1 The Contractor shall monitor its performance against the Milestones as set out in Schedule 12 of this Call-Off Contract and report to the Authority on such performance.
- 6.2 Changes to the Milestones (if any) shall only be made in accordance with the Variation Form and the Contractor shall not attempt to postpone any of the Milestones using the Variation Form or otherwise.
- 6.3 Time, in relation to compliance with a Milestone Due Date, shall be of the essence and any failure of the Contractor to comply with such a Milestone Due Date shall constitute a material breach of the Call-Off Contract and will be dealt with in accordance with Clause 24 (Termination on Default), unless the Parties expressly agree otherwise.

## **7 WARRANTIES AND REPRESENTATIONS**

- 7.1 The Contractor warrants and undertakes to the Authority that:
  - 7.1.1 it has the right and authority to enter into this Call-Off Contract and that it has the capability and capacity to fulfil its obligations under this Call-Off Contract;
  - 7.1.2 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Call-Off Contract and the documents referred to in this Call-Off Contract;
  - 7.1.3 all necessary actions to authorise the execution of and performance of its obligations under this Call-Off Contract have been taken before such execution;
  - 7.1.4 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Contractor;
  - 7.1.5 there are no material agreements existing to which the Contractor is a party which prevent the Contractor from entering into or complying with this Call-Off Contract;
  - 7.1.6 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Call-Off Contract;
  - 7.1.7 it has satisfied itself as to the nature and extent of the risks assumed by it under this Call-Off Contract and has gathered all information necessary to perform its obligations under this Call-Off Contract and all other obligations assumed by it.
- 7.2 In entering the Call-Off Contract:
  - 7.2.1 the Contractor has not committed any Fraud;
  - 7.2.2 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

- 7.2.3 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 7.2.4 in the three (3) years prior to the Commencement Date:
- a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern, ability to fulfil its obligations under the Call-Off Contract or provide the Services.
- 7.3 The Contractor warrants and undertakes to the Authority that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 7.3.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 7.3.2 promptly provide to the Authority:
- a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 7.4 The Contractor warrants and undertakes to the Authority that:
- 7.4.1 it shall comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains and notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 7.4.2 it shall at all times conduct its business in a manner that is consistent with any Anti-Slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Contractor's compliance with this Clause 7.4 and/or as may be requested or otherwise required by the Authority in accordance with its Anti-Slavery Policy;
- 7.4.3 neither the Contractor nor any of its Contractor Personnel:
- a) has been convicted of any offence involving slavery and human trafficking; and
  - b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any

governmental, administrative or Regulatory Body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## **8 CHANGE CONTROL PROCESS**

- 8.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Contractor's Proposals, as may be requested by the Authority from time to time.
- 8.2 Any change to the Services or other variation to this Call-Off Contract shall only be binding once it has been agreed either:
  - 8.2.1 in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal Change Control Process; or
  - 8.2.2 if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

## **9 KEY PERSONNEL**

- 9.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 9.2 The Contractor shall not remove or replace any Key Personnel unless:
  - 9.2.1 requested to do so by the Authority;
  - 9.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 9.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 9.2.4 the Contractor obtains the Authority's prior written consent.
- 9.3 The Authority shall not unreasonably withhold its consent under Clause 9.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Call-Off Contract which could be caused by a change in Key Personnel.

## **10 CONTRACTOR PERSONNEL**

- 10.1 At all times, the Contractor shall ensure that:
  - 10.1.1 each of the Contractor Personnel responsible for providing the Services is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - 10.1.2 there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;
  - 10.1.3 only those people who are authorised by the Contractor are involved in providing the Services.

- 10.2 The Contractor shall procure that in respect of all Contractor Personnel performing any of the Services (each a "**Named Employee**") before a Named Employee begins to attend any of the Premises to perform any of the Services:
- 10.2.1 each Named Employee is questioned as to whether he or she has any Convictions or Asbos;
  - 10.2.2 the results are obtained of a basic check made with the Disclosure and Barring Service in respect of each Named Employee; and
  - 10.2.3 a copy of the results of such checks as are referred to in Clause 10.2.2 (Disclosure and Barring) are notified to the Authority.
- 10.3 The Contractor shall procure that:
- 10.3.1 no person who appears on a Barred List following the results of a Disclosure and Barring Service check shall be employed or engaged in the performance of any Services; and
  - 10.3.2 it shall and shall procure that all Sub-contractors shall comply with all reporting requirements to the Disclosure and Barring Service.
- 10.4 The Contractor shall procure that no person who discloses any Convictions or Asbos, or who is found to have any Convictions or Asbos following the results of a Disclosure and Barring Service check, is employed or engaged without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 10.5 Insofar as permitted by Legislation, the Contractor shall procure that the Authority is kept advised at all times of any Contractor Personnel who, subsequent to his/her commencement of employment for the Contractor:
- 10.5.1 receives a Conviction or Asbo which becomes known to the Contractor or any Sub-contractor or whose previous Convictions or Asbos become known to the Contractor or any Sub-contractor;
  - 10.5.2 in respect of whom information is referred to the Disclosure and Barring Service pursuant to the Disclosure and Barring Scheme; or
  - 10.5.3 who is placed on a Barred List pursuant to the Disclosure and Barring Scheme.
- 10.6 In the event that any member of staff or any employee of any Sub-contractor of any tier involved in the provision of the Services is added to a Barred List, the Contractor shall procure that such member of staff or employee of a Sub-contractor is immediately removed from the relevant Premises and shall cease to be engaged in the performance of the Services.
- 10.7 It is acknowledged that the requirements in respect of Self-Isolation and/or quarantine may change during the Term of this Call-Off Contract, in particular in respect of a requirement to quarantine following international travel. It is also acknowledged that there may be some exemptions to the requirement to quarantine following international travel, including by virtue of the individual carrying out an exempt role, and that individuals engaged in an exempt role may also wish to be engaged in the provision of the Services. In the light of the potential health and safety concerns arising from someone carrying out the Services failing to comply with the Self-Isolation and/or quarantine requirements, the Contractor shall:

- 10.7.1 procure that no person who falls within an exemption to the requirement to quarantine following international travel is engaged in the Services unless such person can evidence that they have complied with the quarantine requirement as if they were not exempt; and
- 10.7.2 without prejudice to Clause 10.7.1 of this Schedule 2, use best endeavours to procure that all Contractor Personnel shall comply with quarantine and Self-Isolation requirements and notify the Contractor immediately in the event of a positive Covid-19 test or requirement to Self-Isolate or quarantine.
- 10.8 Occupation of the Premises by the Contractor, its staff and Sub-contractors is on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor, its personnel and Sub-contractors shall vacate the Premises on the expiry or earlier termination of this Contract. Responsibility for procuring the licence for the Contractor to occupy the Premises sits with the Authority. In terms of the condition of the Premises the Authority shall be deemed to have satisfied itself in relation to means of access to and through the Premises, the possibility of interference by any person with such access and the times and methods of working necessary to prevent any nuisance whether public or private to the Contractor or any third party, the boundaries of the Premises and the rights exercisable over or in relation to the Premises so that the Contractor can carry out its Services without interference.
- 10.9 The Contractor shall limit access to the Premises to such of its staff and Sub-contractors as is necessary to enable the Contractor to perform its obligations under this Call-Off Contract and the Contractor shall co-operate (and ensure that its staff and Sub-contractors co-operate) with such other persons working concurrently on such Premises as the Authority may reasonably request.
- 10.10 The Contractor shall (and shall ensure that its staff and Sub-contractors shall) observe and comply at all times with any local site management rules and regulations as may be in force at any time for the use of the Premises as determined by the Authority whether or not for health and safety, good estate management or otherwise required by the owners of the Premises.
- 10.11 The Authority (acting reasonably) may:
- 10.11.1 instruct the Contractor that disciplinary action is taken its staff or any Sub-contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case to the extent necessary the Authority shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- 10.11.2 where the Authority has reasonable grounds for considering that the presence or conduct of an employee of the Contractor at any Premises is undesirable, require the exclusion of such employee from the relevant Premises.
- 10.12 The Contractor shall (and shall ensure that its staff and Sub-contractors) not do or to fail to do anything that might place the Authority to be in breach of the terms and conditions of its occupying lease or licence for any of the Premises.
- 10.13 For the Term, the Contractor shall pay the Contractor Personnel carrying out the provision of the Services on its behalf at not less than the Real Living Wage and any adjustments to the Monthly Charge to take account of any changes to the Real Living Wage shall be dealt with in accordance with the Change Control Process.

## **11 MANNER OF CARRYING OUT THE SERVICES**

- 11.1 The Contractor shall begin performing the Services on the Services Commencement Date and continue to perform them for the Term.
- 11.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.
- 11.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 11.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Call-Off Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

## **12 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE**

- 12.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 12.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in Schedule 7 (Service Levels, Service Credits and Performance Monitoring) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 12.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.
- 12.4 At the Authority's request, within five (5) Working Days of such request (or as otherwise specified by the Authority), the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).
- 12.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance, in accordance with the terms of Schedule 7 (Service Levels, Service Credits and Performance Monitoring).
- 12.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
  - 12.6.1 whether the Contractor believes the objectives of the Call-Off Contract were achieved;

- 12.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 and that had been forecast in the Contractor's tender submission were achieved; and
- 12.6.3 to identify any lessons learnt for future projects.
- 12.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 12.6.1 to 12.6.3 of this Schedule 2 as it sees fit.

### **13 RIGHT OF AUDIT**

- 13.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- 13.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- 13.3 For the purpose of:
  - 13.3.1 the examination and certification of the Authority's accounts; or
  - 13.3.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and (5) of the National Audit Act 1983.

### **14 PROPERTY**

- 14.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain (for the purposes of this Contract) the property of the Authority. The Contractor shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 14.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.
- 14.3 Upon receipt of the Property the Contractor shall subject it to:
  - 14.3.1 a reasonable visual inspection, and
  - 14.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.
- 14.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.

- 14.5 The Contractor shall ensure the security of all Property whilst in its possession and shall not remove any Property from the Premises on expiry of the Contract or on removal of any of the Premises from the scope of the Contract.
- 14.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

## 15 RECOVERY OF SUMS DUE

- 15.1 The Authority may set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor under this Call-Off Contract or under any agreement between the Contractor and the Authority.

## 16 CONFIDENTIAL INFORMATION

- 16.1 For the purposes of this Clause, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly Confidential Information.
- 16.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
- 16.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 16.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Call-Off Contract or without the Disclosing Party's prior written consent;
- 16.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
- 16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 16.3 Clause 16.1 of this Schedule 2 shall not apply to the extent that:
- 16.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
- 16.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;
- 16.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;



- 16.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 16.3.5 it is independently developed without access to the other Party's Confidential Information.
- 16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 16.5 The Contractor may only disclose the Confidential Information of the Authority to the Contractor Personnel directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 16.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Confidential Information of the Authority received otherwise than for the purposes of the Call-Off Contract and the provision of the Services.
- 16.7 At the written request of the Authority, the Contractor shall procure that Contractor Personnel identified in the Authority's request shall sign a confidentiality undertaking (in a form acceptable to the Authority) prior to commencing any work in accordance with the Contract.
- 16.8 The Authority may disclose the Confidential Information of the Contractor:
  - 16.8.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
  - 16.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 16.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 16.8.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 16.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
  - 16.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - 16.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 16 (Confidential Information).

16.8A The Contractor may disclose the Confidential Information of the Authority:

- 16.8A.1 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Contractor for any purpose relating to or connected with the Contract; or
- 16.8A.2 on a confidential basis for the purpose of the exercise of its rights under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Contractor under this Clause 16 (Confidential Information).

- 16.9 The Authority shall use all reasonable endeavours to ensure that any government department, Authority, employee, third party or Sub-contractor to whom the Confidential Information of the Contractor is disclosed pursuant to Clause 16.3 of this Schedule 2 is made aware of the Authority's obligations of confidentiality.
- 16.10 Nothing in this Clause 16 (Confidential Information) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 16.11 Failure by the Contractor to comply with any of its obligations under this Clause 16 (Confidential Information) shall be an irremediable material breach of this Call-Off Contract and the Authority shall be entitled to terminate the Call-Off Contract pursuant to Clause 24.2.1 of this Schedule 2.

## **17 RESPONSIBILITY OF THE AUTHORITY**

- 17.1 For the duration of the Services and in respect of the Services, unless otherwise agreed by the parties, the Authority will use reasonable endeavours to provide the Contractor Personnel with appropriate specialist clinically-related personal protective equipment ("PPE"), such equipment to be provided prior to the commencement of the Services and throughout the term of the Call-Off Contract.
- 17.2 Without prejudice to the generality of Clause 17.1, the Authority will not be liable for any breach of Clause 17.1, where it is unable to provide PPE to the Contractor but nor shall the Contractor be required to provide the Services during the period where such PPE is not available; and
  - 17.2.1 where the Contractor incurs costs as a result of failure to provide PPE, those costs shall be properly chargeable, save that the Contractor may not charge labour and other costs incurred after a continual absence of PPE has lasted for more than seven (7) days. In that instance, the Contractor shall either desist from incurring the costs or, provided the Contractor has first obtained prior written approval from the Authority, source its own PPE, the costs of which may be charged;
  - 17.2.2 the Contractor will not be liable for any failure to provide the Services where the Contractor is unable to provide the Services due to a failure by the Authority to meet its obligations under Clause 17.1 and this includes where after using reasonable endeavours the Authority has not fulfilled its obligations.
- 17.3 For the duration of the Services and in respect of the Services, unless otherwise agreed by the parties, the Authority shall:

- 17.3.1 establish, provide, and manage secure and safe Premises to enable the Contractor's Personnel to assist the Authority to perform the Services;
- 17.3.2 ensure that the Premises have appropriate heating and ventilation;
- 17.3.3 provide a safe working environment for all the Contractor's Personnel;
- 17.3.4 ensure that the Premises are deep cleaned before the commencement of Services at each Premises on each day and at frequent intervals throughout each day;
- 17.3.5 provide hot and cold drinking water, bathroom and rest facilities for the Contractor's Personnel at the Premises; and
- 17.3.6 remove any hazardous and non-hazardous waste from the Premises at frequent intervals during and at the end of each day.
- 17.4 The Authority warrants that any equipment provided by the Authority or on behalf of the Authority, including any test kits provided to the Contractor for use as part of the Services, have been approved by all relevant regulatory authorities, are safe for use by the Contractor's Personnel and that all relevant permits, licences and consents have been obtained for the provision of the Services.

## **18 PROTECTION OF PERSONAL DATA**

- 18.1 Each party shall comply with any relevant laws concerning data protection (including Data Protection Legislation).
- 18.2 Subject to the provisions of Clauses 18.4 to 18.7 of this Schedule 2, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The Contractor is only authorised to process AT Personal Data on behalf of the Authority pursuant to this Call-Off Contract and acting in accordance with Schedule 13 (Processing, Personal Data and Data Subjects).
- 18.3 Subject to the provisions of Clauses 18.4 to 18.7 of this Schedule 2, the Authority recognises its legal responsibility as a Controller to issue instructions and to operate organisational and technical measures compliant with the Data Protection Legislation, including where it may be required to process sensitive Personal Data. The Contractor recognises its responsibility to comply with the requirements of the Controller in the process of AT Personal Data in the performance of the Services. Where the Contractor believes that any aspect of the provision of the Service or the instructions of the Controller are likely to infringe the Data Protection Legislation or are not in accordance with Schedule 13 (Processing, Personal Data and Data Subjects), it shall notify the Authority and seek instruction as to how to proceed. Any such notification which may reasonably result in the Service being impeded shall not constitute a Default by Contractor.
- 18.4 The Parties agree that each Party processes Relevant Data as an independent Controller in its own right and that the provisions of Clauses 18.2 and 18.3 shall not apply to the Relevant Data. Nothing in this Contract or the arrangements contemplated by it is intended to construe either Party as the Processor of the other Party or Joint Controllers with one another with respect to Relevant Data.
- 18.5 In respect of Relevant Data:

- 18.5.1 each Party shall provide the other ("**Requesting Party**") with such reasonable assistance as is requested by the Requesting Party to enable the Requesting Party to comply with its obligations under Data Protection Legislation and each Party shall bear its own costs in relation to this Clause 18.5.1 save where such costs arise out of or in connection with a breach by the other party of the Data Protection Legislation in which case the costs shall be borne by the party in breach of the Data Protection Legislation; and
- 18.5.2 the Contractor warrants that it has taken all steps as are required by Data Protection Legislation (including obtaining all necessary consents from and providing all necessary fair processing notices) to allow the Authority to hold and process Relevant Data for the Permitted Purpose, provided that the Authority shall be responsible for providing to the Contractor.
- (i) a copy of all fair processing notices and instructions as to when such notices should be provided to the Data Subjects; and
  - (ii) confirmation as to whether consents are required in respect of the Authority's processing of Relevant Data and instructions in relation to the obtaining of those consents (including the form of such consent).
- 18.5.3 The Contractor shall obtain any consents referred to at Clause 18.5.2 as soon as reasonably practicable and in any event within three months of the date that the Authority notifies the Contractor that consents are required.
- 18.6 At the request of the Authority, Contractor shall provide:
- 18.6.1 written evidence that Contractor has obtained all necessary consents from the relevant Data Subjects and provided all necessary notices to the Data Subjects required under Clause 18.5.2 subject to the Authority having complied with its obligations under Clauses 18.5.2(i) and 18.5.2(ii).
- 18.6.2
- 18.7 If either Party ("**Recipient**") receives any complaint, notice, request (including any subject access request) or communication (whether from a Data Subject, the Information Commissioner, any other regulatory authority or other person) in relation to Relevant Data ("**Request**") and which relates to the other Party's compliance with Data Protection Legislation, the Recipient shall immediately notify the other in writing. The Recipient shall not respond to the Request without the prior written consent of the other Party (except to the extent required by applicable law).

## 19 INTELLECTUAL PROPERTY RIGHTS

- 19.1 All Intellectual Property Rights in any guidance, know-how, specifications, instructions (including Standard Operating Procedures and training materials), toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("**IP Materials**"):
- 19.1.1 furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
  - 19.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Call-Off Contract;

shall belong to the Authority and the Contractor shall not, and shall ensure that the Contractor Personnel shall not, (except when necessary for the performance of the Contract) without prior written consent, use or disclose any Intellectual Property Rights in the IP Materials.

- 19.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 19.1.2 of this Schedule 2. This assignment shall take effect on the date of the Call-Off Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute such assignment.
- 19.3 The Authority hereby grants a royalty free, non-exclusive, licence (with no right to sub-licence) for the duration of the Term to the Contractor to use all Intellectual Property which may subsist in the IP Materials prepared in accordance with Clause 19.1.2 of this Schedule 2. This licence shall take effect on the date of the Contract.
- 19.4 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Call-Off Contract including the Services provided.
- 19.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract, the Services or the performance thereof.
- 19.6 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Call-Off Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain such Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- 19.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:
- 19.7.1 items or materials based upon designs supplied by the Authority; or
- 19.7.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 19.8 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 19.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- 19.9.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 19.9.2 shall take due and proper account of the interests of the Authority; and
- 19.9.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 19.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Call-Off Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 19.7.1 or 19.7.2 of this Schedule 2.
- 19.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 19.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Call-Off Contract or, in the reasonable opinion of the Contractor, is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
  - 19.12.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
  - 19.12.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority; and
  - 19.12.3 in the event that the Contractor is unable to comply with Clauses 19.12.1 or 19.12.2 within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Call-Off Contract with immediate effect by written notice.

## **20 LIABILITY**

- 20.1 Neither Party excludes or limits liability to the other Party for:
  - 20.1.1 death or personal injury caused by its negligence (including clinical negligence), or that of its employees, agents or Sub-contractors;
  - 20.1.2 bribery or Fraud by it or its employees;
  - 20.1.3 fraudulent misrepresentation; or
  - 20.1.4 any liability to the extent that it cannot be excluded or limited by any applicable law.

- 20.2 The Contractor does not exclude or limit its liability in respect of the indemnity at Clause 19.7 and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 20.3 Subject to Clauses 20.4, 20.5, and 20.6 of this Schedule 2, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Call-Off Contract or the presence of the Contractor or any Contractor Personnel on the Premises, including clinical negligence, in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 20.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or acting in accordance with the written instructions of, the Authority, or by breach by the Authority of its obligations under the Call-Off Contract.
- 20.5 Subject always to Clauses 20.1, 20.2, 20.6, 20.7 and 20.8 of this Schedule 2, the total liability of each Party to the other under or in connection with this Call-Off Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the lower of:
- 20.5.1 five million pounds (£5,000,000); or
- 20.5.2 one hundred and twenty five per cent (125%) of the total contract price (being the sum of Monthly Charges paid to the Contractor in a Contract Year) paid or payable by the Authority to the Contractor for the Services.
- 20.6 Subject always to Clause 20.1, in no event shall either Party be liable to the other for any:
- 20.6.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
- 20.6.2 loss of savings (whether anticipated or otherwise); and/or
- 20.6.3 indirect or consequential loss or damage.
- 20.7 For the purposes of calculating the cap on liability set out in Clause 20.5 above, any Service Credits payable by the Contractor to the Authority and any Monthly Charge payable by the Authority to the Contractor shall not be taken into consideration.
- 20.8 Subject always to Clauses 20.1, 20.2, 20.6 and 20.9 of this Schedule 2 the Contractor's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);
- 20.9 The Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- 20.9.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 20.9.2 any wasted expenditure or charges;
- 20.9.3 the additional costs of procuring replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under the Contract;
- 20.9.4 any compensation or interest paid to a third party by the Authority; and
- 20.9.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 20.10 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 20.11 Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the performance by the Contractor of any and all of its obligations under the Call-Off Contract and in respect of any losses incurred by the Authority under or in connection with this Call-Off Contract as a result of Defaults by the Contractor.
- 20.12 Clause 20 of this Schedule 2 shall survive the expiry of or earlier termination of this Call-Off Contract for any reason.

## 21 INSURANCE

- 21.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and (subject to Clause 21.4 of this Schedule 2) for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 21.2 The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.
- 21.3 Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions. Within five (5) Working Days following written request from the Authority the Contractor must provide documentary evidence that the insurance arrangements required under the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 21.4 Subject to Clause 21.6 and Clause 21.7, if directed by the Authority, the Contractor shall (and shall use its reasonable endeavours to procure that each of its Sub-contractors shall) procure that any ongoing liability it has or may have in negligence to any member of the public arising out of any Services provided under this Call-Off Contract will continue to be the subject of appropriate insurance arrangements for ten (10) years following termination or expiry of this Call-Off Contract or (if earlier) until that liability may reasonably be considered to have ceased ("**CN Insurance**"). In the event that such CN Insurance is taken out in respect of the services provided under



the RTS Call-Off Contract, the cost of such CN Insurance shall only be charged to the Authority under the RTS Call-Off Contract.

- 21.5 Where the Authority directs the Contractor to obtain the CN Insurance in accordance with Clause 21.4, the Contractor shall provide the Authority with satisfactory evidence in writing as soon as reasonably practicable of such CN Insurance being obtained and maintained. The Authority may at any time request from the Contractor evidence that it has maintained the CN Insurance in accordance with Clause 21.4.
- 21.6 Other than as detailed in Clause 21.7, where the Authority directs the Contractor to obtain the CN Insurance in accordance with Clause 21.4 and the Contractor fails to obtain the CN Insurance, the Authority may themselves procure appropriate insurance arrangements in respect of such ongoing liabilities and the Contractor must indemnify and keep the Authority indemnified against the costs incurred by them in doing so.
- 21.7 If the Contractor is unable to procure CN Insurance pursuant to the direction of the Authority under Clause 21.5, the Contractor shall inform the Authority as soon as reasonably practicable. The Contractor and the Authority shall then discuss alternative insurances that may be put in place and the Authority may direct and the Contractor shall promptly put in place such alternative insurances. The Contractor shall, as soon as reasonable practicable, provide the Authority with satisfactory evidence in writing of such alternative insurance being obtained and maintained. In the event that such alternative insurance is taken out in respect of services provided under the RTS Call-Off Contract, the cost of such alternative insurance shall only be charged to the Authority under the RTS Call-Off Contract. The Authority may at any time request from the Contractor evidence that it has maintained such alternative insurance in accordance with this Clause 21.8. If no alternative insurances are available, this shall not cause the Contractor to be in breach of its insurance obligations under this Call-Off Contract.
- 21.8 The Contractor must not take any action or fail to take any reasonable action nor (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any insurance arrangements put in place in accordance with the Key Provisions may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired, or which may otherwise render any sum paid out under those insurance arrangements wholly or partly repayable.
- 21.9 The Contractor will not require, and must ensure that no subcontractor will require, any member of the public to sign any document whatsoever containing any waiver of the Contractor's liability in relation to the Services.
- 21.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 20 (Liability) of this Schedule 2.

## **22 TRANSFER AND SUB-CONTRACTING**

- 22.1 The Contractor shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the Call-Off Contract or any part of it without the prior written consent of the Authority.
- 22.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the Call-Off Contract or any part thereof to:

- 22.2.1 any other body established by the Crown; or
- 22.2.2 under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- 22.2.3 any private sector body which substantially performs the functions of the Authority,  
  
and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 22.2.
- 22.3 A change in the legal status of the Authority shall not, subject to Clause 22.4 of this Schedule 2 affect the validity of the Call-Off Contract and the Call-Off Contract shall be binding on any successor body to the Authority.
- 22.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Call-Off Contract to a private sector body in accordance with Clause 22.2.3 of this Schedule 2 ("**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 23 (Termination on Insolvency and Change of Control) of this Schedule 2 shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 23 (Termination on Insolvency and Change of Control) of this Schedule 2 were references to the Transferee).
- 22.5 The Contractor shall exercise due skill and care in the selection of any Sub-contractors to ensure that the Contractor is able to:
  - 22.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
  - 22.5.2 comply with its obligations under the Call-Off Contract in the provision of the Services; and
  - 22.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to the Contract.
- 22.6 Prior to sub-contacting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:
  - 22.6.1 the proposed Sub-contractor's name, registered office and company registration number; and
  - 22.6.2 the scope of any Services to be provided by the proposed Sub-contractor.
- 22.7 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 22.6 of this Schedule 2, the Contractor shall also provide:
  - 22.7.1 a copy of the proposed Sub-contract; and
  - 22.7.2 any further information reasonably requested by the Authority.
- 22.8 The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 22.6 of this Schedule 2 (or, if later, receipt of any further information requested pursuant to Clause 22.7 of this Schedule 2), object to the appointment of the relevant Sub-contractor if they consider that:

- 22.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under the Contract;
- 22.8.2 the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
- 22.8.3 the proposed Sub-contractor employs unfit persons; and/or
- 22.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 22.14 of this Schedule 2,

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

- 22.9 If the Authority has not notified the Contractor that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:

- 22.9.1 the Contractor's notice issued pursuant to Clause 22.6 of this Schedule 2; and
- 22.9.2 any further information requested by the Authority pursuant to Clause 22.7 of this Schedule 2

the Contractor may proceed with the proposed appointment.

- 22.10 The Contractor shall ensure that all Sub-contracts (which in this Clause includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- 22.10.1 requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 22.10.2 that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 22.10.1 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 22.10.3 of this Schedule 2 after a reasonable time has passed;
- 22.10.3 requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- 22.10.4 giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 22.10.5 requiring the Sub-contractor to include a clause to the same effect as this Clause 22.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

- 22.11 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed provided it has received such sums from the Authority.

- 22.12 Notwithstanding any provision of Clauses 16 (Confidential Information) and 31 (Publicity) of this Schedule 2 if the Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled

to publish the details of the late or non-payment (including on government web+ and in the press).

22.13 Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 22, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

22.14 Where the Authority considers whether there are grounds for exclusion of a Sub-contractor under Regulation 57 of the Regulations, then:

22.14.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;

22.14.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not appoint the Sub-contractor

and the Contractor shall comply with such a requirement.

## **23 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

23.1 The Authority may terminate the Call-Off Contract with immediate effect by giving written notice where the Contractor is a company and in respect of the Contractor:

23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or

23.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Contractor be wound up or a resolution for the winding-up of the Contractor is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

23.1.3 a petition is presented for the winding-up of the Contractor (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Contractor pursuant to section 98 of the Insolvency Act 1986; or

23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets; or

23.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within ten (10) Working Days;

23.1.6 an application is made in respect of the Contractor either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

23.1.7 if the Contractor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

23.1.8 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

- 23.1.9 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:
- a) adversely impacts on the Contractor's ability to supply the Services in accordance with the Contract; or
  - b) could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services in accordance with the Contract; or
- 23.1.10 the Contractor demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Contractor; or
- 23.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Contractor comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 23.1.12 the Contractor being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 23.1.13 the Contractor being an individual or any partner or partners in the Contractor who together are able to exercise control of the Contractor where the Contractor is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 23.1.14 any event similar to those listed in Clauses 23.1.1 to 23.1.13 occurs under the law of any other jurisdiction.
- 23.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Call-Off Contract by notice in writing with immediate effect within six (6) Months of:
- 23.2.1 being notified that a Change of Control has occurred or is planned or is in contemplation; or
  - 23.2.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where the Authority's written consent to the continuation of the Call-Off Contract was granted prior to the Change of Control.

## 24 TERMINATION ON DEFAULT

- 24.1 In the case of a material breach of any of this Call-Off Contract by the Contractor that is capable of remedy (including, without limitation any failure to pay any sums due

under this Contract), the Authority shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Contractor the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Contractor ("**Remedial Proposal**") before exercising any right to terminate this Call-Off Contract in accordance with Clause 24.2 of this Schedule 2. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Contractor in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Contractor to:

- 24.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant Default or breach within a period of five (5) Working Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant Default or breach from the Authority;
- 24.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be twenty (20) days unless otherwise agreed between the Parties); and/or
- 24.1.3 remedy the Default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 24.2 of this Schedule 2, a material breach of this Call-Off Contract by the Contractor not remedied in accordance with an agreed Remedial Proposal.

- 24.2 The Authority may terminate the Contract, or terminate the provision of any part of the Services, with immediate effect if the Contractor commits a material breach of any of the terms of this Call-Off Contract which is:

- 24.2.1 not capable of remedy; or
- 24.2.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; by giving written notice to the Contractor if the Contractor commits a material breach of this Call-Off Contract which is not capable of remedy, or in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

- 24.3 The Authority shall be entitled to terminate the Call-Off Contract with immediate effect by giving written notice to the Contractor:

- 24.3.1 in the event that the Contractor fails to meet all or any of the Milestones set out in Schedule 12 and these are not capable of remedy in accordance with Clause 24.1;
- 24.3.2 in the event that in any Service Period, the Contractor incurs Service Credits against four (4) or more individual Service Levels;
- 24.3.3 in the event that the Contractor exceeds the Service Credit Cap in respect of Service Credits applied in any three (3) consecutive Service Periods;
- 24.3.4 the Contractor exceeds the Service Credit Cap in respect of Service Credits applied in any three (3) Service Periods in a rolling twelve (12) Month period;
- 24.3.5 pursuant to and in accordance with the Key Provisions and Clauses 19.12.3, 27.1.4, 29.4, 32.2 and 33.6.2 of this Schedule 2.;

- 24.3.6 where the warranty given by the Contractor pursuant to Clause 7.2.1 of this Schedule 2 is materially untrue;
- 24.3.7 the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 7.3 of this Schedule 2, or the Contractor fails to provide details of proposed mitigating factors as required by Clause 7.3 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable;
- 24.3.8 if the Contractor commits a material breach of the Anti-slavery Policy, or
- 24.3.9 if the Authority has terminated the Framework Agreement pursuant to clause 15.4.6 of schedule 2 of the Framework Agreement.
- 24.4 If the Authority fails to pay the Contractor undisputed sums of money after thirty (30) days of having received a valid invoice, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within forty five (45) days of the date of such written notice, the Contractor may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 15 (Recovery of Sums Due) of this Schedule 2.

## **25 TERMINATION FOR BREACH OF THE REGULATIONS OR CONVENIENCE**

- 25.1 The Authority may terminate the Call-Off Contract with immediate effect by giving written notice to the Contractor on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c)) of the Regulations.
- 25.2 The Authority may terminate this Call-Off Contract at any time by giving one (1) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice. Except in the case of termination for breach, such notice shall not be served within one (1) Months of the Services Commencement Date.
- 25.3 Should the Authority terminate this Call-Off Contract in accordance with Clause 25.2 then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 25.2.
- 25.4 The Authority shall not be liable under Clause 25.3 to pay any sum which:
  - 25.4.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
  - 25.4.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Call-Off Contract had not been terminated prior to the expiry of the Term; or
  - 25.4.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

## **26 CONSEQUENCES OF EXPIRY OR EARLIER TERMINATION**

- 26.1 Where the Authority terminates the Call-Off Contract under Clause 24 (Termination on Default) of this Schedule 2 and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under Clause 24 (Termination on Default) of this Schedule 2, no further payments shall be made by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of arranging an alternative supplier of the Services. For the avoidance of doubt, there will be no double recovery.
- 26.2 Save as otherwise expressly provided in the Contract:
- 26.2.1 termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 26.2.2 termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clauses 4 (Payment and VAT), 13 (Right of Audit), 15 (Recovery of Sums Due), 16 (Confidential Information), 18 (Protection of Personal Data), 19 (Intellectual Property Rights), 20 (Liability), 21 (Insurance), 26 (Consequences of Expiry or Termination), 28 (Recovery upon Termination), 30 (Waiver and Remedies Cumulative), 32 (Official Secrets Acts and Finance Act), 33 (Prevention of Fraud and Bribery), 40 (Freedom of Information Act) and 48 (Law and Jurisdiction).

## **27 DISRUPTION & STEP-IN RIGHTS**

### **27.1 Disruption**

- 27.1.1 The Contractor shall take reasonable care to ensure that, in the performance of its obligations under the Contract, it does not disrupt the operations of the Authority, its employees or any other contractor employed or engaged by the Authority.
- 27.1.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 27.1.3 In the event of industrial action by the Contractor Personnel, the Contractor shall prepare proposals for the continuation of its obligations under the Call-Off Contract for the Authority to approve.
- 27.1.4 If the Contractor's proposals referred to in Clause 27.1.3 of this Schedule 2 are considered insufficient or unacceptable by the Authority, acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Authority by written notice.
- 27.1.5 If the Contractor is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of normal business of the Authority, the Contractor



may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## 27.2 Step-In Rights

### 27.2.1 Reason for Step-In

If:

- a) the Authority reasonably believes that it needs to take action in connection with the Services because a serious risk exists to the health or safety of persons or property or to the Premises; or
- b) the Authority has terminated the Framework Agreement pursuant to clause 15.4.6 of schedule 2 of the Framework Agreement;

then the Authority shall be entitled to take action in accordance with Clauses 27.2.2 (Notify Contractor) and 27.2.5 (Contractor in Breach) to discharge a statutory duty and/or provide some or all of the Services in place of the Contractor.

### 27.2.2 Notify Contractor

If either of the conditions in Clause 27.2.1 applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing ("**Step-In Notice**") of the following:

- a) the action it wishes to take;
- b) the reason for such action;
- c) the date it wishes to commence such action;
- d) the time period which it believes will be necessary for such action; and
- e) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

### 27.2.3 Action by Authority

- a) Following service of such notice, the Authority shall take such action as notified under Clause 27.2.2 and any consequential additional action as it reasonably believes is necessary to overcome the circumstances giving rise to the Step-In Notice (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable in its anticipated completion.
- b) Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses where it fails to do so.

### 27.2.4 Contractor Not in Breach

If and to the extent that any Required Action is taken which does not result from a breach by the Contractor of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out the Services:

- a) the Contractor shall be relieved from its obligations to carry out the Services; and
- b) in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred) the Monthly Charge (net of any cost savings arising as a result of the Required Action) due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations in carrying out the Services affected by the Required Action in full over that period.

#### 27.2.5 Contractor in Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out the Services:

- a) the Contractor shall be relieved of its obligations to carry out such part of the Works and/or provide such part of the Services; and
- b) in respect of the period in which the Authority is taking the Required Action, the Monthly Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Services affected by the Required Action in full over that period less an amount equal to all the Authority's costs associated with taking the Required Action.

### 28 RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CALL-OFF CONTRACT

28.1 Upon expiry or earlier termination (for any reason) of this Contract, the Contractor shall at the request of the Authority and at the Contractor's cost:

- 28.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services (but excluding copies of such Confidential Information, Personal Data or IP Materials that the Contractor is required to retain pursuant to the Law or for regulatory purposes);
- 28.1.2 except where the retention of Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Personal Data in a secure manner and provide written confirmation to the Authority that the data has been destroyed in such manner;
- 28.1.3 immediately deliver to the Authority all Property under its control provided to the Contractor under Clause 14 (Property) of this Schedule 2. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- 28.1.4 vacate and procure that the Contractor Personnel vacate any Premises occupied for the purposes of providing the Services;
  - 28.1.5 return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and
  - 28.1.6 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any Replacement Contractor to conduct due diligence.
- 28.2 If the Contractor fails to comply with Clause 28.1.1 and 28.1.2 of this Schedule 2, the Authority may recover possession of the items mentioned in those Clauses. The Contractor shall grant, and shall procure that any Sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Sub-contractors where any such items may be held.

## **29 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

- 29.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 24 (Termination on Default) of this Schedule 2.
- 29.2 Not used.
- 29.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Call-Off Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.
- 29.4 In the event that:
- 29.4.1 the Contractor fails to comply with Clause 29.3 of this Schedule 2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - 29.4.2 the Contractor persistently fails to comply with Clause 29.3 of this Schedule 2;

the Authority may terminate the Call-Off Contract with immediate effect by giving written notice.

## **30 WAIVER AND CUMULATIVE REMEDIES**

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

- 30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 39 (Service of Notices and Communications) of this Schedule 2.
- 30.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 30.4 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **31 PUBLICITY**

- 31.1 The Contractor shall not and shall procure that its Sub-contractors shall not:
  - 31.1.1 make any press announcements or publicise the Call-Off Contract in any way; or
  - 31.1.2 use the Authority's name or brand in any promotion or marketing or announcement,

without the prior written consent of the Authority.

- 31.2 The Contractor shall not by itself, its employees or agents and procure that its Sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement or the Project without the prior written consent of the Authority.
- 31.3 The Authority shall be entitled to publicise the Call-Off Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 31.4 The provisions of this Clause 31 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

### **32 OFFICIAL SECRETS ACTS AND FINANCE ACT**

- 32.1 The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:
  - 32.1.1 the Official Secrets Acts 1911 to 1989; and
  - 32.1.2 section 182 of the Finance Act 1989.
- 32.2 The Authority may terminate the Call-Off Contract with immediate effect by giving written notice to the Contractor if the Contractor or any of the Contractor Personnel do not comply with Clause 32.1 of this Schedule 2.

### **33 PREVENTION OF FRAUD AND BRIBERY**

- 33.1 The Contractor warrants and undertakes to the Authority that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:
  - 33.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- 33.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 33.2 The Contractor shall not during the Term:
- 33.2.1 commit a Prohibited Act; and/or
- 33.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 33.3 The Contractor shall during the Term:
- 33.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 33.3.2 keep appropriate records of its compliance with its obligations under Clause 33.3.1 of this Schedule 2 and make such records available to the Authority on request;
- 33.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause of all persons associated with the Contractor or its Sub-contractors who are responsible for supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence as the Authority may reasonably request; and
- 33.3.4 have, maintain and, where appropriate, enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 33.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 33.1 of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:
- 33.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 33.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 33.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Call-Off Contract or otherwise suspects that any person or party directly or indirectly connected with the Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 33.5 If the Contractor makes a notification to the Authority pursuant to Clause 33.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other

relevant documentation in accordance with Clause 13 (Right of Audit) of this Schedule 2.

33.6 If the Contractor breaches Clause 33.1 of this Schedule 2, the Authority may by notice:

33.6.1 require the Contractor to remove from the performance of the Call-Off Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or

33.6.2 immediately terminate the Call-Off Contract pursuant to Clause 24.3.5 of this Schedule 2.

33.7 Any notice served by the Authority under Clause 33.6 of this Schedule 2 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Call-Off Contract shall terminate).

#### **34 NON-SOLICITATION**

34.1 Except in respect of any transfer of staff pursuant to Schedule 10, neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Term or for a further period of twelve (12) Months after the termination of the Call-Off Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of the other Party.

34.2 If either the Contractor or the Authority commits any breach of Clause 34.1 of this Schedule 2 the breaching party shall, on demand, pay to the claiming party a sum equal to one (1) year's basic salary or the annual fee that was payable by the claiming party to that employee, Worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

#### **35 CONFLICT OF INTEREST**

35.1 The Contractor recognises that the Authority is subject to PPN 01/19: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing: (<https://www.gov.uk/government/publications/procurement-policy-note-0119-applying-exclusions-in-public-procurement-managing-conflicts-of-interest-and-whistleblowing>). The Contractor shall comply with the provision of this Clause 35 in order to assist the Authority with its compliance with its obligations under that PPN.

35.2 The Contractor shall take appropriate steps to ensure that neither the Contractor nor the Contractor Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interest of the Contractor or the Contractor Personnel and the duties owed to the Authority and other Contracting Authorities under the provisions of the Contract.

35.3 The Contractor shall promptly notify and provide full particulars to the Authority or the relevant other Authority if such conflict arises or may reasonably be foreseen as arising.

35.4 Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the term of the Call-Off Contract in any capacity for any person, firm or

company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 35.4.

- 35.5 The Authority reserves the right to terminate the Call-Off Contract with immediate effect by giving written notice to the Contractor and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **36 EQUALITY AND DIVERSITY**

36.1 The Contractor shall:

- 36.1.1 perform its obligations under the Call-Off Contract (including those in relation to provision of the Services) in accordance with:

- a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

- 36.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

36.2 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in sex, age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, maternity, pregnancy, marriage, civil partnership or otherwise) in employment.

36.3 The Contractor shall take all reasonable steps (at its own expense) to secure the observance of Clause 36.1 of this Schedule 2 by all of its servants, employees or agents of the Contractor engaged in performance of the Call-Off Contract and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Contractor by Clause 36.1 of this Schedule 2.

36.4 The Contractor shall indemnify the Authority against all direct costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Contractor, its agents, employees or Sub-contractors.

36.5 The Contractor shall (and shall use its reasonable endeavours to procure that the Contractor Personnel shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.

- 36.6 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 36.7 Subject to Clause 20 (Liability) of this Schedule 2, the Contractor agrees to indemnify and keep indemnified the Authority against all direct loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Clause 36 (Equality and Diversity).

### **37 HEALTH AND SAFETY**

- 37.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Contractor Personnel in the performance of the Services.
- 37.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 37.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of the Services.
- 37.4 The Contractor shall inform all Contractor Personnel engaged in the provision of Services at the Premises of all known health and safety hazards and shall instruct those Contractor Personnel in connection with any necessary safety measures.
- 37.5 Whilst on the Premises, the Contractor shall comply, and shall procure that the Contractor Personnel comply, with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 37.6 The Contractor shall notify the Authority Representative immediately in the event of any incident occurring in the performance of the Services on the Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 37.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

### **38 RELATIONSHIP OF THE PARTIES**

- 38.1 Except as expressly provided otherwise in the Contract, nothing in the Contract, nor any actions taken by the Parties pursuant to the Call-Off Contract shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

### **39 SERVICE OF NOTICES AND COMMUNICATIONS**

- 39.1 Any notice required to be given by either Party under this Call-Off Contract shall be in writing quoting the date of the Call-Off Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 39.2 A notice shall be treated as having been received:



- 39.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 39.2.2 if sent by first class recorded delivery mail on a normal Working Day, at 9.00am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00am on the third Working Day subsequent to the day of posting; or
- 39.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

#### 40 FREEDOM OF INFORMATION ACT

- 40.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
  - 40.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority, at the Contractor's expense, to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
  - 40.1.2 transfer to the Authority all requests for information that it receives under the FOIA and the Environmental Information Regulations ("**Requests for Information**") relating to the Call-Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 40.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Contractor's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 40.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 40.2 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.
- 40.3 The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 13 (Right of Audit) of this Schedule 2 and shall permit the Authority to inspect such records as the Authority requests from time to time.
- 40.4 The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 13 (Right of Audit) of this Schedule 2.

#### 41 TRANSPARENCY

- 41.1 The Contractor recognises that the Authority is subject to PPN 01/17: Update to Transparency Principles (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Contractor shall comply with the provision of this Clause 41 in order to assist the Authority with its compliance with its obligations under that PPN.
- 41.2 The Parties agree and acknowledge that the content of this Call-Off Contract is not Confidential Information, except for:
- 41.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
- 41.2.2 Commercially Sensitive Information.
- 41.3 Notwithstanding any other provision of this Call-Off Contract, the Contractor hereby gives consent for the Authority to publish to the general public this Call-Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call-Off Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 41.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Call-Off Contract.

#### 42 FORCE MAJEURE

- 42.1 Subject to Clause 42.2 of this Schedule 2, neither Party shall be liable to the other for any failure to perform, or delay in performing, all or any of its obligations under this Call-Off Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations, or delay in performing its obligations, to the extent only that such performance is rendered impossible or is delayed by a Force Majeure Event.
- 42.2 The Contractor shall only be entitled to rely on a Force Majeure Event and the relief set out in this Clause 42 and will not be considered to be in Default or liable for breach of any obligations under this Call-Off Contract if:
- 42.2.1 the Contractor has fulfilled its obligations pursuant to Clause **Error! Reference source not found.** of this Schedule 2;
- 42.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any willful or negligent act or Default of the Contractor; and
- 42.2.3 the Contractor has complied with the procedural requirements set out in this Clause 42.
- 42.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 42.4 Where the Force Majeure Event affects the Contractor's ability to perform part of its obligations under the Framework Agreement the Contractor shall fulfil all such

contractual obligations that are not so affected and shall not be relieved from its liability to do so.

- 42.5 If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 42.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 42.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 42.8 If the Contractor is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Call-Off Contract by issuing a Termination Notice to the Contractor.
- 42.9 Following such termination in accordance with Clause 42.8 of this Schedule 2 and subject to Clause 42.10 of this Schedule 2, neither Party shall have any liability to the other.
- 42.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 42.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Call-Off Contract.

#### **43 DISPUTE RESOLUTION**

- 43.1 The Authority and the Contractor shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Call-Off Contract within fourteen (14) days of either notifying the other party of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.
- 43.2 Nothing in this dispute resolution procedure shall prevent the Authority or the Contractor from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 43.3 If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 43.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 43.5 of this Schedule 2 unless:
- 43.3.1 the Authority considers that the dispute is not suitable for resolution by mediation;  
or
- 43.3.2 the Contractor does not agree to mediation.
- 43.4 The obligations of the Authority and the Contractor under the Call-Off Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation

and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Call-Off Contract at all times.

43.5 The procedure for mediation is as follows:

- 43.5.1 a neutral adviser or mediator ("**Contract Mediator**") shall be chosen by agreement between the Authority and the Contractor or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
- 43.5.2 the Authority and the Contractor shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Authority and the Contractor may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- 43.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 43.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 43.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Call-Off Contract without the prior written consent of both Parties; and
- 43.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

#### **44 SEVERABILITY**

- 44.1 If any provision of the Call-Off Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Call-Off Contract shall continue in full force and effect as if the Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

#### **45 ENTIRE AGREEMENT**

- 45.1 The Call-Off Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Call-Off Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by

one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

**46 FURTHER ASSURANCES**

- 46.1 Each Party undertakes at the request of the other, and at the cost of the Requesting Party, to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of the Contract.

**47 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 47.1 A person who is not a party to the Call-Off Contract 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 both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

**48 LAW AND JURISDICTION**

- 48.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 48.2 Subject to Clause 43 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Call-Off Contract or its subject matter.

## Schedule 3 - Definitions and Interpretation

### 1 DEFINITIONS

1.1 In the Call-Off Contract unless the context requires otherwise the following definitions shall be used for the purposes of interpreting the Contract. Other definitions that are not of general application are stated in the Clause where the definition first appears and shall apply only to that Clause unless otherwise shown below:

**"Actual Performance"** means the Contractor's actual performance against a Service Level within a Service Period, calculated as set out in the tables at Annex 1 and Annex 2 of Schedule 7;

**"Anti-slavery Policy"** means the Contractor's slavery and human trafficking policy, if any;

**"Asbo"** means an injunction or criminal behaviour order issued in accordance with the Anti-Social Behaviour Crime and Policing Act 2014;

**"AT Personal Data"** means Personal Data processed by the Contractor (as Processor) on behalf of the Authority (as Controller) as described in Clause 3 of Schedule 13;

**"Authority"** means the Secretary of State for Health and Social Care acting as part of the Crown through the UK Health Security Agency;

**"Authority Data"** means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (a) supplied to the Contractor by or on behalf of the Authority; or
- (b) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

any Personal Data for which the Authority is the Controller;

**"Authority Representative"** means the person authorised to act for the Authority for the purposes of the Contract, being the person specified in the Key Provisions;

**"Barred List"** the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;

**"Business Continuity Event"** means any event, issue or disaster that could impact on the operations of the Contractor and its ability to provide the Services;

**"Business Continuity and Disaster Recovery Plan"** means the Contractor's business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;

**"Calculations Table"** means the calculations tables set out in Annex 1 and Annex 2 of Schedule 7;

**"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 Process"** means the change control process, if any, referred to in the Key Provisions;

**"Clinical Governance Costs"** has the meaning set out in Paragraph 2.1.3 of Annex 1 to Schedule 6 (Pricing);

**"CN Insurance"** has the meaning set out in Clause 21.4 of Schedule 2 of this Call-Off Contract;

**"Commencement Date"** means 8 January 2023;

**"Commercially Sensitive Information"** means the information listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

**"Confidential Information"** means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 16 (Confidential Information));
- (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

**"Contract"** means the form of contract at the front of this document and all schedules attached to the form of contract;

**"Contractor"** means the contractor named on the form of Call-Off Contract on the second page;

**"Contractor Personnel"** means all directors, officers, employees, Workers, agency workers, agents, consultants and contractors of the Contractor and/or of any Sub-contractor engaged in the performance of the Contractor's obligations under the Call-Off Contract from time to time;

**"Contractor Representative"** means the individual authorised to act for the Contractor for the purposes of the Contract, being the person specified in the Key Provisions;

**"Contractor's Proposals"** means the responses, proposals and/or method statements prepared by the Contractor as part of its Tender to meet the Specification;

**"Contracts Finder"** means the facility provided by the Cabinet Office to advertise contract opportunities available at <https://www.gov.uk/contracts-finder> and any successor facility or website;

**"Contract Year"** means a period of a rolling twelve (12) Months occurring within the Term;

**"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"** take the meaning given in the GDPR;

**"Convictions"** other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

**"CPI"** means Consumer Price Index;

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**"Data Protection Legislation"** means:

- (a) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; (ii) Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and
- (b) all applicable Law about the processing of personal data and privacy;

**"Data Subject Access Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

**"Deductions"** means all Service Credits, or any other deduction which the Authority is paid or is payable under this Call-Off Contract;

**"Default"** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement:

- (a) in the case of the Authority, of its employees, servants or agents; or
- (b) in the case of the Contractor, of its Sub-contractors or any Contractor Personnel,

in connection with or in relation to the subject matter of the Call-Off Contract and in respect of which such Party is liable to the other;

**"Disclosure and Barring Scheme"** the disclosure and barring scheme operated by the Disclosure and Barring Service;

**"Disclosure and Barring Service"** the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;



"**DOTAS**" if applicable means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A Social Security Administration Act 1992;

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"**Expenses**" has the meaning set out in Paragraph 2.1.4 of Annex 1 to Schedule 6 (Pricing);

"**Exit Day**" shall have the meaning in the European Union (Withdrawal) Act 2018;

"**Exit Services**" means the services set out in

Schedule 14;

**"Expiry Date"** means the date upon which the Call-Off Contract shall end as specified in the Key Provisions;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**"Force Majeure Event"** means any event beyond the reasonable control of the party in question to include, without limitation:

- (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either party's ability to perform its obligations under this Framework Agreement;
- (b) acts of terrorism;
- (c) flood, storm or other natural disasters;
- (d) fire;
- (e) unavailability of public utilities and/or access to transport networks to the extent no diligent Contractor could reasonably have planned for such unavailability as part of its Business Continuity and Disaster Recovery Plan ;
- (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Contractor to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Contractor having used all reasonable legal means to resist such requisition or impoundment;
- (g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;
- (h) industrial action which affects the ability of the Contractor to provide the Services, but which is not confined to the workforce of the Contractor or the workforce of any Sub-Contractor of the Contractor; and
- (i) a failure in the Contractor's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the parties

but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;

**"Fraud"** means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

**"GDPR"** means the General Data Protection Regulation 2016/679 as implemented by the European Union (Withdrawal) Act 2018 and as amended from time to time including by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020);

**"General Anti-Abuse Rule"** if applicable, means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances;

**"Halifax Abuse Principle"** if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;

**"Impact Assessment"** has the meaning given to it in Clause 10.5 of Schedule 1;

**"Implementation Plan"** means the implementation plan, if any, referred to in the Key Provisions;

**"Implementation Period"** means the period set out by the Authority for the Contractor to establish the running of the Services, as set out in Schedule 12 (Millstones);

**"Information"** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

**"Initial Permitted Purpose"** means:

- (a) to monitor cases of COVID-19 and identify trends; and
- (b) to identify where an outbreak of COVID-19 occurs and to send the information to Public Health England;

**"Intellectual Property Rights"** includes but is not limited to patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, rights in software programmes, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**"Joint Controllers"** means two (2) or more Controllers that jointly determine the purposes and means of processing;

**"Key Personnel"** means those persons named in Schedule 11 as being key personnel or such persons as shall be agreed in writing by the Authority from time to time;

**"Law"** means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply including but not limited to the Modern Slavery Act 2015;

**"Legislation"** any one or more of the following:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;

- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

**"Lot"** means any of the seven (7) lots specified in Schedule 6 (Call-Off Procedure and Award Criteria) of the Framework Agreement and "Lots" shall be construed accordingly.

**"Milestone"** means a key deliverable that will be due by a particular date, as set out in the table in Schedule 12;

**"Milestone Due Date"** means the date when a Milestone is due, as set out in the table in Schedule 12;

**"Month"** means calendar month;

**"Monthly Charge"** means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Call-Off Contract, as set out in Schedule 6 (Pricing) for the full and proper performance by the Contractor of its obligations under the Call-Off Contract;

**"Named Employee"** has the meaning given to it in Clause 10.2 (Disclosure and Barring);

**"Occasion of Tax Non-Compliance"** if applicable, means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for Fraud or evasion;

**"Other Charges"** has the meaning set out in Paragraph **Error! Reference source not found.** of Annex 1 to Schedule 6 (Pricing);

**"Overhead Costs"** has the meaning set out in Paragraph 2.1.2 of Annex 1 to Schedule 6 (Pricing);

**"Party"** means a party to the Contract;

**"People Costs"** has the meaning set out in Paragraph 2.1.1 of Annex 1 to Schedule 6 (Pricing);

**"Performance Monitoring System"** has the meaning given to it in Schedule 7 (Service Levels, Service Credits and Performance Monitoring);

**"Performance Target"** means the performance target percentage as set out in the tables in Part 2 of Annex 1 and Part 2 of Annex 2 to Schedule 7;

**"Permitted Purpose"** means any purpose notified by the Authority to the Contractor in writing including, but not limited to the Initial Permitted Purpose;

**"Person"** where the context allows, includes a corporation or an unincorporated association;

**"Premises"** means, where applicable, the locations where the Services are to be supplied, as set out in the Schedule 4 (Specification);

**"Processing"** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working or engaged by a Authority and/or the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity; or
- (b) committing any offence:
  - (i) under the Bribery Act 2010; or
  - (ii) under legislation creating offences concerning Fraud; or
  - (iii) at common level concerning Fraud; or
  - (iv) committing (or attempting or conspiring to commit) Fraud;

**"Property"** means any equipment and other assets, excluding any Premises and any PPE, issued or made available to the Contractor by the Authority or other third party authorised by the Authority in connection with the Contract;

**"Quality Standards"** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 4 (Specification) and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;

**"Real Living Wage"** means the Living Wage or London Living Wage (as applicable to the relevant location of the Services), being the non-statutory minimum hourly rate of pay as set by the Living Wage Foundation at [www.livingwage.org.uk](http://www.livingwage.org.uk);

**"Regulations"** means the Public Contracts Regulations 2015 as amended from time to time;

**"Regulatory Bodies"** means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations,

codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Call-Off Contract and "**Regulatory Body**" shall be construed accordingly;

"**Relevant Requirements**" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"**Relevant Data**" means the Personal Data required for any Permitted Purpose including, but not limited to, the Personal Data of Contractor employees working at the Premises, that is shared by Contractor with the Authority for the Initial Permitted Purpose;

"**Relevant Tax Authority**" if applicable, means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

"**Relevant Transfer**" means a transfer of employment to which the TUPE Regulations applies;

"**Relevant Transfer Date**" means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"**Replacement Contractor**" means any third party contractor of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;

"**Replacement Services**" means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are provided by the Authority itself or by any Replacement Contractor;

"**Requesting Party**" has the meaning given in Clause 18.5 of Schedule 2;

"**Required Action**" has the meaning given in Clause 27.2.3 of Schedule 2;

"**Review Report**" has the meaning given in Clause **Error! Reference source not found.** of Schedule 15;

"**RTS Call-Off Contract**" means the call-off contracts from the Framework Agreement with [REDACTED]  
[REDACTED]

"**Self-Isolate**" or "**Self-Isolation**" means times when the Contractor's Personnel have to self-isolate, for the minimum number of days required by legislation, because any of the following circumstances apply:

- (a) such individual has tested positive for Covid-19 at one of the Premises;
- (b) such individual has tested positive for Covid-19 at any other place; or
- (c) such individual has been instructed to self-isolate by NHS Test and Trace;

"**Self-Isolation Payments**" means, for each of the Contractor's Personnel who were required to Self-Isolate during the Service Period, the greater of either:

- (a) the relevant hourly rate (including national insurance and pension contributions) for the role undertaken by each individual, multiplied by the number of hours such individual was due to work during the period of Self-Isolation, but was unable to work due to the need to Self-Isolate; or

- (b) the average pay (including national insurance and pension contributions) of such individual over a theoretical ten (10) day period, calculated by averaging their actual pay across the preceding three (3) ten-day (10-day) periods prior to commencement of the Self-Isolation;

**"Service Credit Cap"** has the meaning given to it in Clause 12 of Schedule 1 (Key Provisions);

**"Service Credits"** means any service credits specified in Annex 1 of Schedule 7 (Service Levels, Service Credits and Performance Monitoring) being payable by the Contractor to the Authority in respect of any failure by the Contractor to meet one or more Service Levels;

**"Service Level Failure"** means a failure to meet the Service Level Performance Measure in respect of a Service Level;

**"Service Level Performance Criteria"** shall be as set out in the tables in Part 2 of Annex 1 and Part 2 of Annex 2 to Schedule 7 (Service Levels, Service Credits and Performance Monitoring);

**"Service Level Performance Measure"** shall be as set out against the relevant Service Level Performance Criterion in the tables in Part 2 of Annex 1 and Part 2 of Annex 2 to Schedule 7 (Service Levels, Service Credits and Performance Monitoring);

**"Service Levels"** means any service levels applicable to the provision of the Services under this Call-Off Contract specified in the tables in Part 2 of Annex 1 and Part 2 of Annex 2 to Schedule 7 (Service Levels, Service Credits and Performance Monitoring);

**"Service Transfer"** means any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;

**"Service Transfer Date"** means the date of a Service Transfer;

**"Services"** means the services to be supplied as specified in Schedule 4 (Specification);

**"Services Commencement Date"** means the services commencement date, if any, referred to in the Key Provisions;

**"SME"** means an enterprise falling within the category of micro, small and medium-sized enterprises ([http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)) defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**"SME Management Information Reports"** has the meaning set out in Clause 16.5 of Schedule 1 of this Call-Off Contract;

**"Sub-contract"** means the Contractor's contract with a Sub-contractor whereby that Sub-contractor agrees to provide to the Contractor the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services;

**"Sub-contractor"** means any person appointed by the Contractor to carry out any and/or all of the Contractor's obligations under the Contract;

**"Subject Matter Experts"** not used.

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;

**"Supply Chain Information Report Template"** means the spreadsheet as set out in Annex 1 to this Call-Off Contract;

**"Term"** means the term as set out in the Key Provisions;

**"Termination Notice"** means any notice to terminate this Call-Off Contract which is given by either Party in accordance with the provisions of the Contract;

**"Termination Period"** means the period specified in the Termination Notice during which period the Authority may require the Contractor to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Term;

**"Transferring Former Contractor Employees"** shall have the meaning ascribed in Schedule 10 (Staff Transfer);

**"Transferring Authority Employees"** shall have the meaning ascribed in Schedule 10 (Staff Transfer);

**"Variance"** means the difference between the Performance Target and the Actual Performance for a Service Level within a Service Period, calculated as set out in Annex 1 and Annex 2 of Schedule 7;

**"Variation"** has the meaning given to it in Clause 10.3 of Schedule 1;

**"Variation Form"** means the form set out in Schedule 9 (Variation Form);

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

**"Voluntary, Community and Social Enterprise" or "VCSE"** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

**"Worker"** means any one of the Contractor Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies in respect of the Services;

**"Weighting"** means the weighting that will be applied in the Service Credit calculation, as set out in the table in Part 2 of Annex 1 to Schedule 7;

**"Working Day"** means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 The interpretation and construction of the Call-Off Contract shall be subject to the following provisions:

1.2.1 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

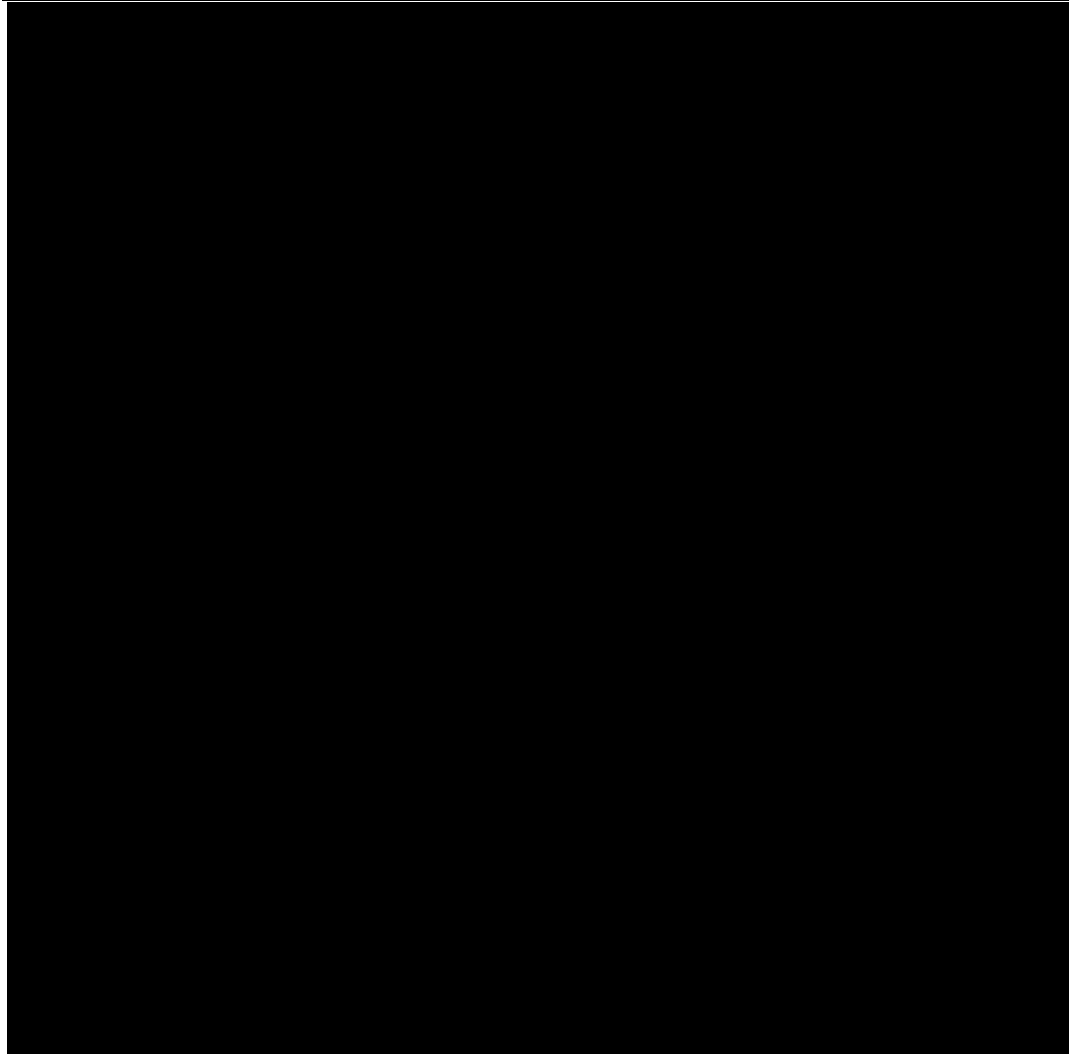
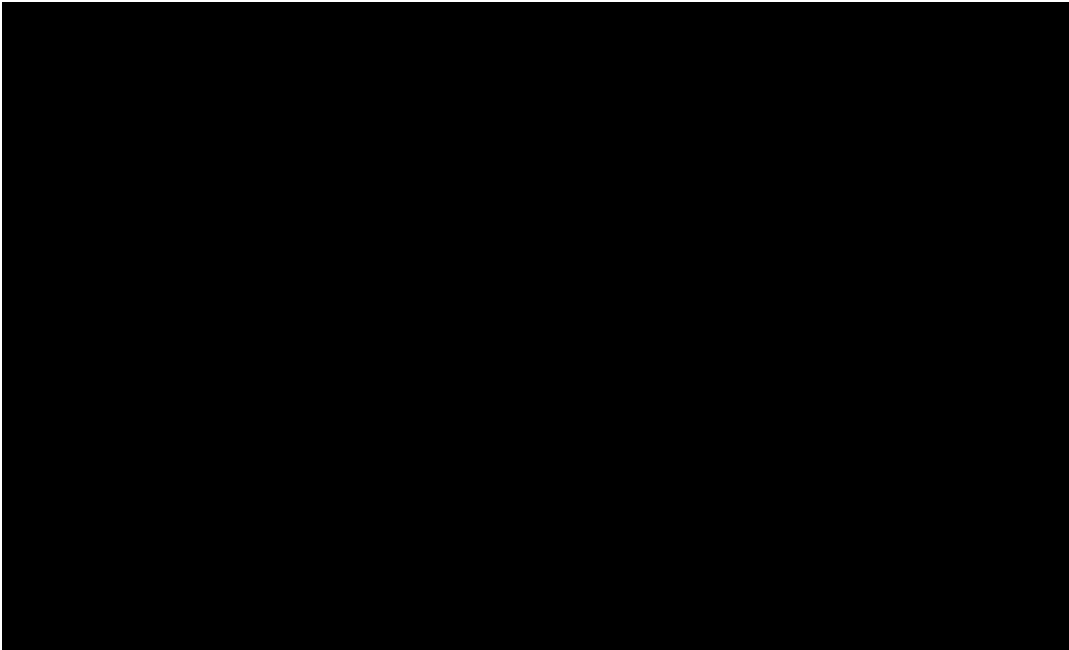
1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or



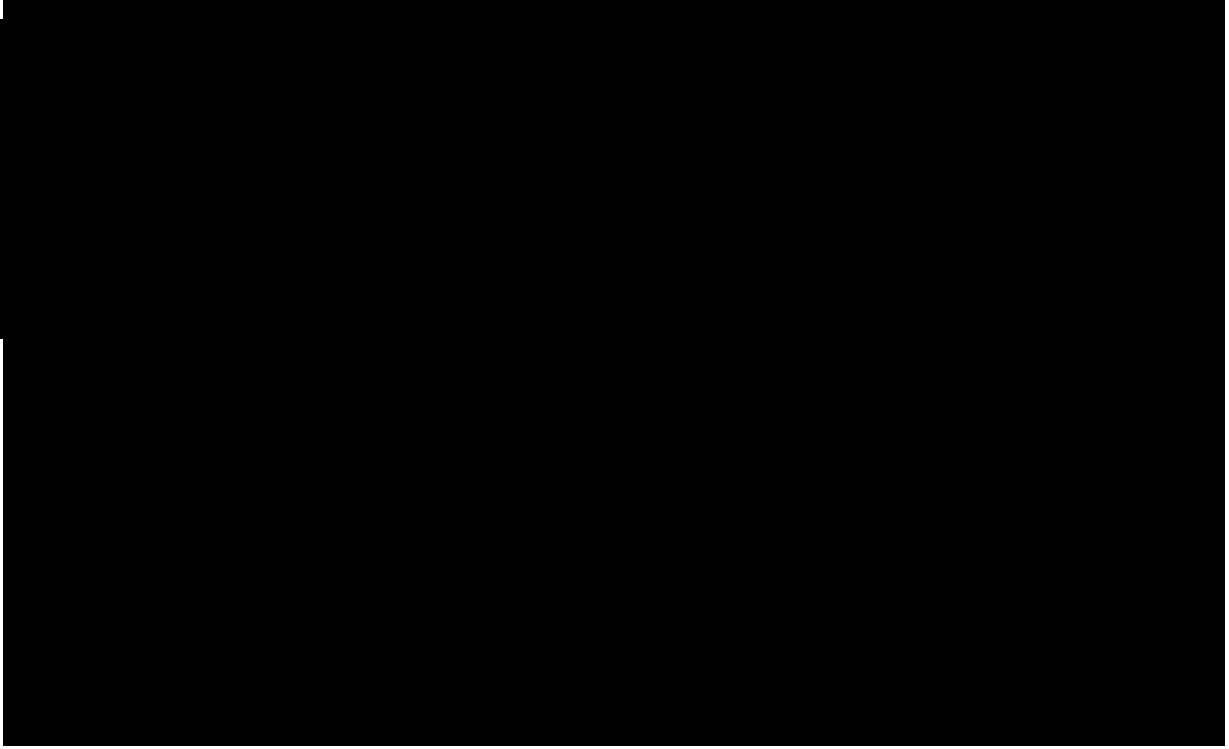
instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 Where there is any conflict between the Contractor's Proposals (being set out at Schedule 5) and any other part of this Contract, such other part of this Call-Off Contract shall prevail.
- 1.4 In entering into this Call-Off Contract the Authority is acting as part of the Crown.
- 1.5 Any reference in this Call-Off Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
  - 1.5.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - 1.5.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

## Schedule 4 - Specification



## Schedule 5 – Contractor's Proposals



## Schedule 6 – Call-Off Contract Charges, Payment and Invoicing

### 1. GENERAL PROVISIONS

1.1 This Schedule details:

- 1.1.1 the Monthly Charge for the Services under this Call-Off Contract;
- 1.1.2 the invoicing procedure; and
- 1.1.3 the procedure applicable to any adjustments of the Monthly Charge.

### 2. MONTHLY CHARGE

- 2.1 The Monthly Charge which is applicable to this Call-Off Contract is set out in Annex 1 to this Schedule 6.
- 2.2 The Contractor acknowledges and agrees that the rates used to calculate the Monthly Charge cannot be increased during the Call-Off Contract Period.

### 3. COSTS AND EXPENSES

- 3.1 The Monthly Charge includes all costs and expenses relating to the Services and/or the Contractor's performance of its obligations under this Call-Off Contract.
- 3.2 No further amounts shall be payable by the Authority to the Contractor in respect of such performance, including in respect of matters such as:
  - 3.2.1 any incidental expenses that the Contractor incurs, other than those specified in Annex 1 and/or Annex 2 of this Schedule 6; or
  - 3.2.2 any amount for any services provided or costs incurred by the Contractor prior to the Call-Off Commencement Date.

### 4. INVOICING PROCEDURE

- 4.1 The Contractor shall invoice the Authority for the Monthly Charge determined in accordance with Annex 1 to this Schedule 6, calendar Monthly (in arrears), for payment for the Services in accordance with the terms of this Call-Off Contract. Each invoice shall include a detailed line by line breakdown of all costs claimed (including VAT if applicable) in accordance with Annex 1 and Annex 2 to this Schedule 6, and any other details as may be reasonably requested by the Authority. Invoices shall be supported by copy documentation which shall include, but not be limited to timesheets.
- 4.2 The Contractor shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Authority may specify (but, in respect of paper form, subject to Paragraph 4.3 below):
  - 4.2.1 Contains a detailed breakdown of the delivered Services, including any relevant Milestones within this Call-Off Contract to which the Services relate, against the applicable due and payable Monthly Charge; and
  - 4.2.2 shows separately:
    - (a) any Service Credits due to the Authority; and
    - (b) the VAT added to the due and payable Monthly Charge in accordance with Paragraph 3 of Schedule 2 of this Call-Off Contract and the tax point date relating to the rate of VAT shown; and

- 4.2.3 is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a valid invoice.
- 4.3 The Authority's right to request paper form invoicing is subject to procurement policy note 11/15 (available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437471/PPN\\_e-invoicing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf)), which sets out the policy in respect of unstructured electronic invoices submitted by the Contractor to the Authority (as may be amended from time to time).
- 4.4 The Contractor shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Authority to be a suitable means of payment. The Contractor shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.
- 4.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 4.6 The Authority shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in Paragraph 4.7 of this Schedule 6 and in accordance with the provisions of this Call-Off Contract.
- 4.7 Any invoice shall be cross referenced to the application to which it relates and shall be sent electronically to: [REDACTED] The address on top of invoices shall be:

[REDACTED]  
[REDACTED]  
[REDACTED]

## ANNEX 1: CALL OFF CONTRACT CHARGES

### 1. TRANSPARENCY

- 1.1. The Authority requires transparency in all pricing and related costs. On request, the Contractor will provide appropriate analysis of all costs relevant to the provision of the Services to the Authority, including the costs to manage and deliver the Service.

### 2. MONTHLY CHARGE

- 2.1. The Parties have agreed that payment for the Services will be on a 'cost plus' basis, such that the Authority will pay the Contractor's reasonably incurred costs which relate to the provision of the Services, together with the overhead and margin specified in Paragraphs 2.1.2 and 2.1.4. These reasonably incurred costs will form the Monthly Charge for each Service Period. For the purposes of calculating the Contractor's reasonably incurred costs under this Schedule 6, the following components shall be included in such calculation:

- 2.1.1. the direct cost to the Contractor (or any approved Subcontractor, and references to Contractor in this Schedule 6 shall include any approved Subcontractors) of the Contractor Personnel providing the Services which shall include their actual base salary and the direct cost to the Contractor of employing such Personnel including employer's NIC, pensions allowances and disbursements (including travel, subsistence and accommodation as appropriate, unless otherwise stated by the Authority due to the nature of the Services being undertaken) holiday pay, sick pay and any other employment benefits and any local management costs and any applicable agency fees ("**People Costs**") as set out in Annex 2 (Pricing File) to this Schedule 6. The People Costs will be calculated with reference to the rates inputted by the Contractor in Annex 2 (Pricing File) to this Schedule 6.
- 2.1.2. the overhead applied by the Contractor as a percentage increase to the costs set out in Annex 2 (Pricing File) to this Schedule 6, which includes management overhead and corporate overhead ("**Overhead Costs**"). The Overhead Costs will be calculated with reference to the rates inputted by the Contractor in Annex 2 (Pricing File) to this Schedule 6.
- 2.1.3. the direct cost to the Contractor (or any approved Subcontractor) of the hotel expenses, transport expenses (which covers the costs of transporting the Personnel from the hotel to Premises), travel expenses (which covers the cost of transporting the Personnel to the event location) and food expenses ("**Expenses**"). The Expenses will be calculated with reference to the rates inputted by the Contractor in Annex 2 (Pricing File) to this Schedule 6 and the allowances inputted by the Contractor in Annex 2 (Pricing File) to this Schedule 6.
- 2.1.4. the margin applied by the Contractor as a percentage increase to the costs set out in Annex 2 (Pricing File) to this Schedule 6 (People Costs, Overhead Costs and Expenses). The margin is specified by the Contractor in Annex 2 (Pricing File) to this Schedule 6.

**ANNEX 2: PRICING FILE**

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

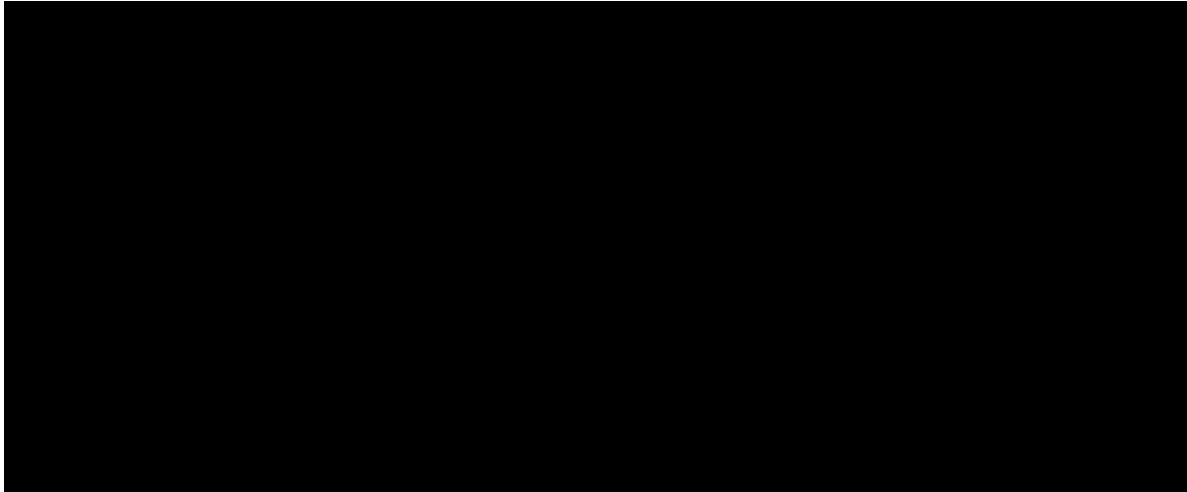
[REDACTED]



[REDACTED]

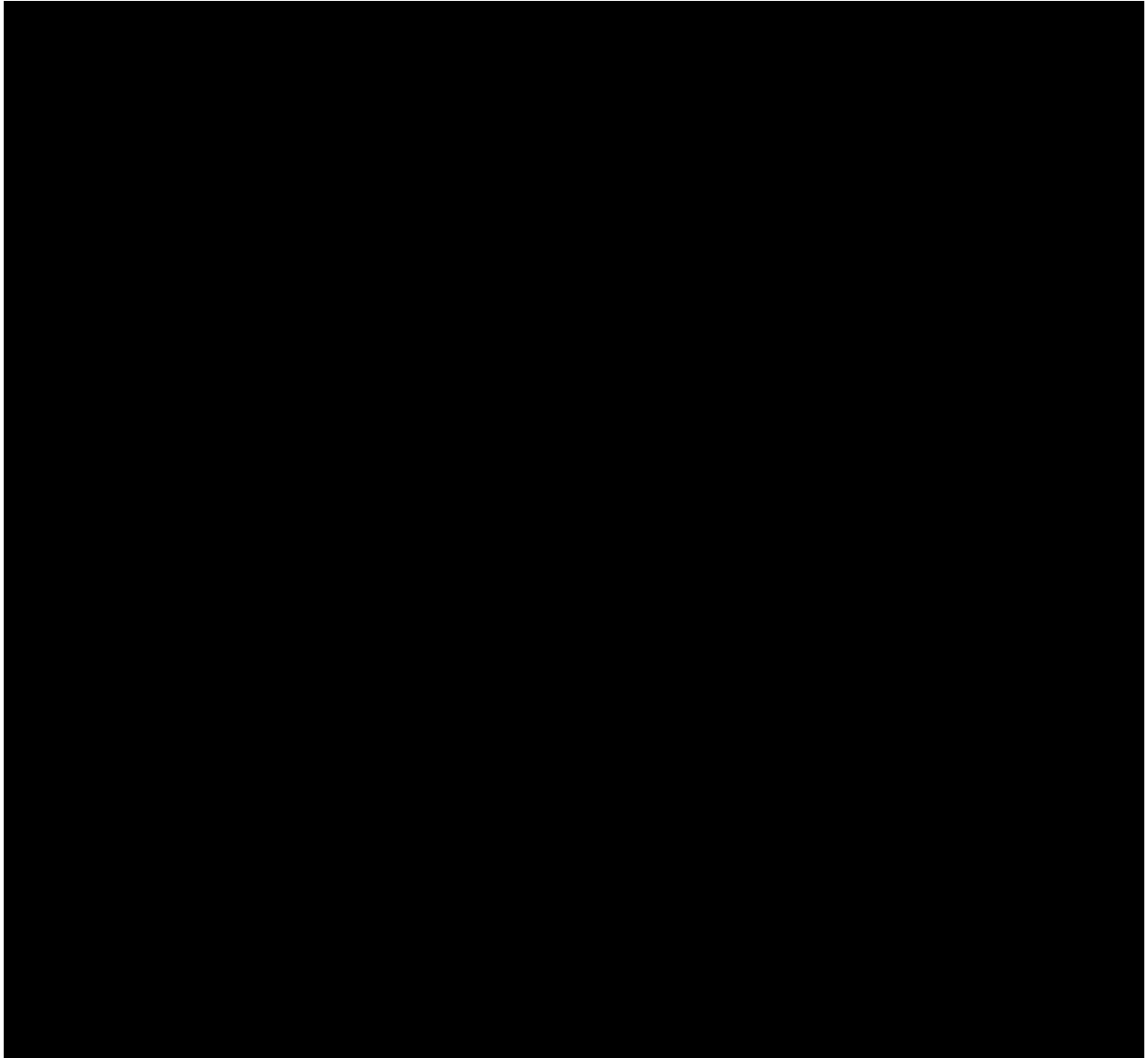
[REDACTED]

## Schedule 7 – Service Levels, Service Credits and Performance Monitoring





## Schedule 8 - Commercially sensitive information



## Schedule 9 - Variation Form

No of Call-Off Contract being varied:

.....

Variation Form No:

.....

BETWEEN:

The Secretary of State for Health and Social Care as part of the Crown through the UK Health Security Agency ("**Authority**")  
and

[insert name of Contractor] ("**Contractor**")

1. The Call-Off Contract is varied as follows and shall take effect on the date signed by both Parties:

**[Insert details of the Variation]**

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

## Schedule 10 - Staff Transfer

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Contractor's Final Contractor Personnel List”</b>	a list provided by the Contractor of all Contractor Personnel who will transfer under the TUPE Regulations on the Relevant Transfer Date;
<b>“Contractor's Provisional Contractor Personnel List”</b>	a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
<b>“Employee Liabilities”</b>	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>“Former Contractor”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor);
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a Sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any Sub-contractor of any such subcontractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the TUPE Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer;
<b>“Staffing Information”</b>	in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Authority may reasonably request (subject

to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in Regulation 11 of the TUPE Regulations;

**“Transferring Former Contractor Employees”**

in relation to a Former Contractor, those employees of the Former Contractor to whom the TUPE Regulations will apply on the Relevant Transfer Date; and

**“Transferring Contractor Employees”**

those employees of the Contractor and/or the Contractor’s Sub-contractors to whom the TUPE Regulations will apply on the Service Transfer Date.

## **2 INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or

warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

**PART A**

**Transferring Former Contractor Employees at commencement of Services**

Not used.

## **PART B**

### **No transfer of employees at commencement of Services**

#### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.
- 1.2 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Contractor shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and
  - 1.2.2 the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Clause 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Clause 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,

the Contractor and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2 INDEMNITIES**

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Clauses 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Clause 2.4, the Authority shall:
  - 2.1.1 indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Clause 1.2 made pursuant to the provisions of Clause 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 2.1.2 procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of Clause 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Clause 1.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Clause 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Clause 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.
- 2.4 The indemnities in Clause 2.1:
- 2.4.1 shall not apply to:
- a) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- b) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Clause 1.2.1 is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six (6) Months of the Services Commencement Date.

### **3 PROCUREMENT OBLIGATIONS**

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



## PART C

### Employment exit provisions

1

- 1.1 The Contractor agrees that all Contractor Personnel who are engaged to provide the Services will either be engaged on short-term contracts that will end no later than the Expiry Date or they will be business as usual employees who will be temporarily deployed to provide the Services.
- 1.2 In the event that the Authority proposes to retender or re-procure the Services (or any part of them) the Contractor will (without prejudice to any obligations to provide employee liability information pursuant to the Transfer of Undertaking (Protection of Employment) Regulations 2006 or other applicable legislation (collectively hereafter known as “**TUPE Regulations**”)) within five days after the Authority's request provide all such assistance and all such information concerning the Contractor Personnel engaged in the Services (or any part of them) as the Authority may reasonably require and that the Contractor can reasonably be expected to provide, including to facilitate a smooth and effective transfer and any prior re-tendering or re-procurement process and to enable the Parties and any potential or actual replacement supplier to fulfil their respective applicable legal obligations (if any) under the TUPE Regulations.
- 1.3 If it comes to the Contractor's attention that any of the Contractor Personnel will transfer to the Authority or a replacement supplier pursuant to the TUPE Regulations, on the termination or expiry of this Contract, it will immediately notify the Authority of this circumstance, and will not make any changes to the contracts of employment of potentially affected individuals from such date, without the prior permission of the Authority.
- 1.4 Should a transfer of any of the Contractor Personnel to the Authority or a replacement supplier occur pursuant to TUPE Regulations the Contractor will (without prejudice to Clause 1.2 and any obligations to provide employee liability information pursuant to the TUPE Regulations) provide all reasonably requested assistance and information required by the Authority to fulfil its applicable legal obligations and the Parties will comply with any of their legal obligations under TUPE.
- 1.5 The Contractor warrants that any information it provides pursuant to Clauses 1.2 and 1.4 shall be true and accurate in all material respects at the time of providing the information. If the Contractor becomes aware of any material change or inaccuracy in the information provided, it will notify the Authority immediately of such change or inaccuracy. The Contractor agrees that information provided to the Authority under Clauses 1.2 and 1.4 may be provided by the Authority to potential and actual replacement suppliers as part of any future re-tendering or re-procurement of the Services or any part of the Services.
- 1.6 Subject to Clause 1.9 (and without prejudice to Clauses 1.7.1 and 1.8.4), the Contractor shall indemnify the Authority (or, as the case may be, a replacement supplier) in respect of any and all liabilities arising in respect of the Contractor Personnel relating to the period on or prior to the termination of the Services (or the relevant part of them).
- 1.7 Upon termination of all or part of the Services:
- 1.7.1 the Contractor shall indemnify the Authority (or, as the case may be, a replacement supplier) for any salary payments, statutory (or if greater,

contractual) notice and any redundancy pay entitlement in respect of the Contractor Personnel who are performing the Services with respect to all personnel who do not transfer to the Authority or a replacement supplier under the TUPE Regulations;

- 1.7.2 the Parties agree that, save for the circumstances in Clause 1.8, no liability for any Unexpected Employees shall transfer to the Authority or to a Replacement Contractor.
- 1.8 For the purposes of this Clause 1 of Part C, “**Unexpected Employee**” means any Contractor Personnel whose employment or engagement has transferred to the Authority or to a replacement supplier under the TUPE Regulations (or in respect of whom it is alleged or asserted that their employment or engagement has so transferred). In the event that the employment or engagement of an Unexpected Employee has transferred (or is asserted to have transferred) to the Authority or a replacement supplier, the following shall apply:
- 1.8.1 the Authority or the replacement supplier will within ten (10) Working Days of becoming aware of that effect or alleged effect notify the Contractor;
- 1.8.2 The Contractor may, within ten (10) Working Days of being so notified, find suitable alternative employment or engagement for, and make an offer of employment or engagement to, the Unexpected Employee; and
- 1.8.3 if no such offer is made by the Contractor, or such an offer is made and not accepted by the Unexpected Employee, within such ten (10) Working Day period then the Authority (or the replacement supplier as the case may be) will at their option either offer the Unexpected Employee employment or engagement or terminate the contract of employment or engagement by reason of redundancy within twenty (20) Working Days thereafter; and
- 1.8.4 should the employment or engagement of the Unexpected Employee be terminated in accordance with Clause 1.8.3, the Contractor will indemnify the Authority or, as the case may be, the replacement supplier in respect of:
- (a) the costs of employing or engaging the Unexpected Employee between the transfer date (or alleged transfer date) and the date of termination; and
  - (b) the statutory (or if greater, contractual) notice and any redundancy pay entitlement that the Authority or the replacement supplier pays to the individual in respect of termination.
- 1.9 In the event that there is a Relevant Transfer under the TUPE Regulations, the Authority and the Contractor will indemnify one another against any claims arising out of their respective failure to comply with the TUPE Regulations (including, in the case of the Authority, any replacement supplier of the Services to whom TUPE Regulations apply).

## **ANNEX 1**

### **List of Notified Sub-Contractors**

## Schedule 11 - Key Personnel

Key Role	Name of Key Personnel	Responsibilities / Authorities
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

## Schedule 12 – Milestones

### 1 GENERAL

1.1 A plan of the Milestones to be achieved is set out in the table at paragraph 1.2 of this Schedule 12.

1.2 The Milestones are as follows:

Milestone Number	Milestone	Milestone Start Date	Milestone Due Date
1	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]

1.3 For the avoidance of doubt, Milestones will be dealt with in accordance with Clause 6 of Schedule 2 to this Call-Off Contract.

1.4 Subject at all times to Clause 17 of Schedule 1, if the Contractor fails to meet a Milestone, the Authority shall be entitled to terminate in accordance with Clause 23 of Schedule 2 of this Call-Off Contract.

## Schedule 13 - Processing, Personal Data and Data Subjects

- 1 The contact details of the Authority Protection Officer are:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- 2 The contact details of the Contractor Data Protection Officer are:

[REDACTED]

- 3 Contractor shall only process AT Personal Data pursuant to this Call-Off Contract in accordance with the below table, unless otherwise directed by the Authority in writing.

<b>Contract Reference:</b>	<b>C153258</b>
<b>Date:</b>	<b>08/01/2023</b>
Identity of the Controller and Processor	Controller: the Authority Processor: the Contractor
Subject matter of the processing	The provision of the Services by the Contractor under this Call-Off Contract necessitates the Contractor processing personal data on behalf of the Authority.
Duration of the processing	During the course of the provision of data entry services.
Nature and purposes of the processing	The performance of the Services pursuant to the Call-Off Contract.
Type of Personal Data	[REDACTED] [REDACTED] [REDACTED]
Categories of Data Subject	[REDACTED]
Duration of retention and subsequent destruction	[REDACTED] [REDACTED] [REDACTED]

- 4 The Contractor shall comply with any further reasonable written instructions from the Authority with respect to the processing of AT Personal Data pursuant to this Contract.
- 5 Upon request the Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing or as reasonably requested during the period of this Contract.
- 6 The Contractor shall, in relation to any AT Personal Data processed in connection with its obligations under this Contract:
  - 6.1 process that AT Personal Data only in accordance with this Schedule 13, unless Contractor is required to do otherwise by applicable law;
  - 6.2 ensure that it has in place appropriate organisational and technical measures to protect against a loss of data;
  - 6.3 ensure that:
    - 6.3.1 Contractor Personnel and any Sub-contractors are subject to appropriate confidentiality undertakings and do not process AT Personal Data except in accordance with this Contract;
    - 6.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the AT Personal Data and ensure that they:
      - a) are aware of and comply with Contractor's duties under this Schedule 13;
      - b) are informed of the confidential nature of the AT Personal Data and do not publish, disclose or divulge any of the AT Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
      - c) have undergone adequate training in the use, care, protection and handling of AT Personal Data;
  - 6.4 not transfer AT Personal Data outside of the UK unless the prior written consent of the Authority has been obtained; and
  - 6.5 at the written direction of the Authority, delete or return AT Personal Data (and any copies of it) to the Authority on expiration or termination of this Call-Off Contract unless the Contractor is required by law to retain the AT Personal Data.
- 7 The Contractor shall notify the Authority immediately if it:
  - 7.1 receives a Data Subject Access Request (or a purported Data Subject Access Request);
  - 7.2 receives a request to rectify, block or erase any AT Personal Data;
  - 7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with AT Personal Data processed under this Contract;

- 7.5 receives a request from any third party for disclosure of AT Personal Data where compliance with such request is required or purported to be required by law; or
  - 7.6 becomes aware of a data loss event or data security breach.
- 8 Taking into account the nature of the processing, the Contractor shall provide the Authority with all reasonable assistance necessary in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made or received in relation to such obligations.
- 9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 13.
- 10 Before allowing any Sub-processor to process any AT Personal Data related to this Contract, the Contractor must:
  - 10.1 notify the Authority in writing of the intended Sub-processor and processing and enter into an appropriate written agreement with the Sub-processor which gives effect to the terms set out in this Schedule 13 such that they apply to the Sub-processor; and
  - 10.2 provide such information regarding the Sub-processor as the Authority may reasonably require.
- 11 The Contractor must notify the Authority in writing of any new, intended Sub-processor and the processing in question.
- 12 Subject to the terms of this Contract, the Contractor shall remain responsible for any Sub-processor.
- 13 The Contractor shall allow for audits and inspections of its data processing activity by the Authority, or an auditor appointed by the Authority.



## Schedule 14 – Exit Services

### 1 EXIT SERVICES

- 1.1 Upon termination or expiry of the Services at any Premises, or on termination or expiry of the Call-Off Contract, the Contractor shall, in respect of each Site:
  - 1.1.1 vacate such Premises and procure that the Contractor Personnel (including Sub-contractor staff) vacate such Premises;
  - 1.1.2 remove any Contractor or third party supplier equipment and/or inventory together with any other materials used by the Contractor to supply the Services, excluding the property (unless agreed otherwise);
  - 1.1.3 return the Premises to a consistent state as immediately before the Contractor commenced providing the Service at such Premises (subject to fair wear and tear and receipt of a condition report of the Premises prior to commencement of the Services from the Authority) so such Premises may be returned to its previous use, including, but not limited to the removal of waste, litter, cleaning areas generally, including, as appropriate, disinfecting such permanent facilities as may have been utilised in the delivery of the Services;
  - 1.1.4 subject to fair wear and tear, make good at its cost any damage to the Premises or any objects contained thereon which was caused directly by the negligent acts or omissions of the Contractor (for the avoidance of doubt, damage includes damage to the fabric of the Premises, buildings, plant, fixed equipment or fittings therein) excluding to the extent that such damage is caused directly by the Authority or any other third party; and
  - 1.1.5 make good any damage to the Premises or any objects contained thereon requested by the Authority, which was not directly caused by the negligent acts or omissions of the Contractor, at the Authority's cost.

## Schedule 15 – Business Continuity and Disaster Recovery

### 1 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN - NOT USED

#### ANNEX 1

[REDACTED]



[REDACTED]