

EXECUTION VERSION – HVIVO SERVICES AGREEMENT

SERVICES AGREEMENT

DATED 19 OCTOBER 2020

(1) DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

and

(2) HVIVO SERVICES LIMITED

SERVICES AGREEMENT

relating to

THE PROVISION OF HUMAN CHALLENGE STUDIES


Government Legal Department

CONTENTS

SECTION A – PRELIMINARIES	1
1 DEFINITIONS AND INTERPRETATION	1
2 WARRANTIES	3
SECTION B – THE SERVICES	5
3 TERM	5
4 SERVICES	6
5 IMPLEMENTATION	9
6 LICENCE TO OCCUPY	9
7 GOODS	10
SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	10
8 FINANCIAL AND TAXATION MATTERS	10
SECTION D – CONTRACT GOVERNANCE.....	12
10 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA	12
11 CHANGE	12
SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN.....	13
12 SUPPLIER PERSONNEL	13
13 SUPPLY CHAIN RIGHTS AND PROTECTIONS.....	16
SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY	22
14 INTELLECTUAL PROPERTY RIGHTS	22
15 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER.....	23
16 LICENCES GRANTED BY THE AUTHORITY.....	25
17 IPRS INDEMNITY.....	26
18 AUTHORITY DATA AND SECURITY REQUIREMENTS	27
19 CONFIDENTIALITY	28

EXECUTION VERSION – HVIVO SERVICES AGREEMENT

20	TRANSPARENCY AND FREEDOM OF INFORMATION	30
21	PROTECTION OF PERSONAL DATA	32
22	PUBLICITY AND BRANDING	38
	SECTION G – LIABILITY, INDEMNITIES AND INSURANCE	39
23	LIMITATIONS ON LIABILITY	39
24	INSURANCE.....	41
	SECTION H – REMEDIES AND RELIEF	41
25	RECTIFICATION PLAN PROCESS	41
26	NOT USED	43
27	REMEDIAL ADVISER.....	43
28	NOT USED	45
29	AUTHORITY CAUSE.....	45
30	FORCE MAJEURE	47
	SECTION I – TERMINATION AND EXIT MANAGEMENT	48
31	TERMINATION RIGHTS	48
32	CONSEQUENCES OF EXPIRY OR TERMINATION	49
	SECTION J – MISCELLANEOUS AND GOVERNING LAW	52
33	COMPLIANCE	52
34	ASSIGNMENT AND NOVATION	53
35	WAIVER AND CUMULATIVE REMEDIES	54
36	RELATIONSHIP OF THE PARTIES	54
37	PREVENTION OF FRAUD AND BRIBERY	54
38	SEVERANCE.....	56
39	FURTHER ASSURANCES.....	57
40	ENTIRE AGREEMENT	57
41	THIRD PARTY RIGHTS	57
42	NOTICES.....	57

43	DISPUTES.....	59
44	GOVERNING LAW AND JURISDICTION	59

SCHEDULES

1	Definitions
2	Services
2.1	Services Description
2.2	Services and Goods Specifications
2.3	Project Plan
2.4	Responsibilities
2.5	Environmental Requirements
2.6	Insurance Requirements
3	Not used
4	Supplier Matters
4.1	Commercially Sensitive Information
4.2	Key Sub-contractors
4.3	Third Party Contracts
5	Not used
6	Not used
7	Financial Matters
7.1	Charges and Invoicing
7.2	Payments on Termination
7.3	Financial Distress
7.4	Financial Reports and Audit Rights
8	Governance
8.1	Governance
8.2	Change Control Procedure
8.3	Dispute Resolution Procedure
8.4	Reports and Records Provisions
8.5	Exit Management
8.6	Service Continuity Plan and Corporate Resolution Planning
8.7	Conduct of Claims
9	Employment
9.1	Not used
9.2	Key Personnel
10	Guarantee
11	Processing Personal Data

THIS AGREEMENT is made on 19 October 2020

BETWEEN:

- (1) **DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY** of 1 Victoria Street, London SW1H 0ET (the "**Authority**"); and
- (2) **HVIVO SERVICES LIMITED** a company registered in England and Wales under company number 02326557 whose registered office is at Queen Mary Bioenterprises Innovation Centre, 42 New Road, London, E1 2AX (the "**Supplier**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The Authority, by means of the Vaccines Taskforce, is involved in finding a solution to the Covid-19 pandemic, and is supporting and investing in vaccine programmes, as well as in building lasting health and economic benefits for the United Kingdom. The Authority sees access to human challenge studies as being an essential means by which these objectives may be met.
- (B) The Supplier is the leading services provider in viral challenge studies, a highly specialised field in which it has developed its expertise since 2001.
- (C) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):

- (i) 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 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
 - (ii) 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;
 - (f) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (g) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (i) unless otherwise provided and save for references in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (j) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and its Annexes; and
 - (c) any other Schedules and their Annexes
- 1.5 The Schedules and their Annexes form part of this Agreement.

1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 **WARRANTIES**

2.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

2.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability,

to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (l) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (m) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

- 2.3 The representations and warranties set out in Clause 2.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 2.4 Each of the representations and warranties set out in Clauses 2.1 and 2.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 2.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 2.1 or 2.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 2.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 2.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

3 TERM

- 3.1 This Agreement:
- (a) shall come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 2 (*Warranties*), 3 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
 - (b) shall remain in force for a period of three (3) years (the “**Term**”) unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (*Termination Rights*); and
 - (c) may have its Term extended by the Authority giving notice to the Supplier.
- 3.2 Save for Clauses 1 (*Definitions and Interpretation*), 2 (*Warranties*), 3 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the “**Condition Precedent**”). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 3.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 3.2:
- (a) this Agreement shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

- 3.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 3.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 3.3.

4 **SERVICES**

Standard of Services

- 4.1 The Supplier shall provide the Services from (and including) the Effective Date.
- 4.2 The Supplier shall ensure that the Services and the Deliverables:
- 4.2.1 comply in all respects with the Specifications; and
 - 4.2.2 are supplied in accordance with the provisions of this Agreement.
- 4.3 The Supplier shall:
- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Environmental Requirements;
 - (iv) the Standards;
 - (v) Schedule 2.7 (Security);
 - (vi) the Specifications; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 4.3(a)(i) to 4.3(a)(vi); and
 - (b) deliver the Services and the Deliverables using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 4.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 4.3(a)(i) to 4.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

- 4.5 The Supplier shall:

EXECUTION VERSION – HVIVO SERVICES AGREEMENT

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 11 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (d) co-operate with the Other Suppliers and provide reasonable information, advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to support the provision of the Services and/or provide services other than the Services to the Authority, and on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (e) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (f) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 4.5(e);
- (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (h) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (j) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its

knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

- (k) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority.
- 4.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 4.7 Without prejudice to Clauses 17.2 and 17.3 (IPRs Indemnity) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 4.5(a) to 4.5(k) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
 - (b) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 4.7(a) and/or Clause 4.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Services

- 4.8 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- (a) the existence of an unresolved Dispute; and/or
 - (b) any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under Clause 31.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

- 4.9 The Authority may request the Supplier to provide any or all of the Optional Services by giving notice to the Supplier in writing.
- 4.10 The Authority and Supplier will negotiate in good faith to agree in writing a clinical protocol, related budget and timetable for each vaccine clinical study covered by the Optional Services as part of a separate Clinical Trial Agreement for each such vaccine clinical study.

5 **IMPLEMENTATION**

Project Plan and Delays

- 5.1 The Supplier shall:
- (a) comply with the Project Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 5.2 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority in accordance with Clause 25.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6 **LICENCE TO OCCUPY**

- 6.1 The Supplier (for the purpose of this Clause 6 the “**Licensee**”) acknowledges that a licence is granted by the Authority (for the purposes of this Clause 6 the “**Licensor**”) to the Licensee to occupy the Premises for the purposes of the Project (the “**Licence**”) and as condition to Supplier's ability to provide the Services.
- 6.2 This Licence does not give the Licensee exclusive occupation of any part of the Premises; the Licensor and the other Project Partners are entitled to enter and use the Premises at any time.
- 6.3 This Licence is personal to the Licensee and cannot be transferred; the Licensee is not entitled to permit anyone other than the Licensee to have access to the Premises provided always that use of the Premises is shared with Imperial, the Authority, and any regulatory bodies and trial and study monitors who require access to and use of the Premises.
- 6.4 This Licence shall not confer on the Licensee any tenancy or lease of the Premises and the Licensor shall be entitled at all times during the subsistence of this Licence to exercise and do without any hindrance by the Licensee all such rights, acts and things in respect of the Premises as the Licensor may require.
- 6.5 The Licensor hereby grants to the Licensee a licence to occupy the Premises for the Licence period under Clause 6.7 in common with the Licensor and all others authorised by the Licensor subject to termination in accordance with Clause 6.7 of this Licence;

- 6.6 The Licensee covenants with the Licensors to observe and perform the terms of the Lease (save in relation to clause 3.4 and 3.5 of the Lease) and not put the Licensors in breach of the terms of the Lease;
- 6.7 The licence to occupy granted by this Licence shall end on the earlier of:-
- 6.7.1 the termination or expiry of this Agreement;
 - 6.7.2 the expiry of any notice given by the Licensors to the Licensee at any time of breach of any of the Licensee's obligations contained in Clause 6.6 of this Licence;
- 6.8 Termination of this Licence pursuant to Clause 6.7 is without prejudice to the rights and remedies of either party against the other in respect of any antecedent breach of any obligation subsisting under this Licence.

7 GOODS

Supply of Goods

- 7.1 Where, as part of the Services, the Supplier is to supply goods ("**Goods**") to the Authority:
- (a) the Supplier shall ensure that the Goods comply with the Specification;
 - (b) if following inspection or testing the Authority considers that the Goods do not conform with the Specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - (c) without prejudice to any other rights or remedies of the Authority:
 - (i) risk in the Goods shall pass to the Authority at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Authority at the time of payment.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

8 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 8.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services and supply of the Goods, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 8.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 10

(Records, Reports, Audits and Open Book Data), 20 *(Transparency and Freedom of Information)*, 21 *(Protection of Personal Data)* and, to the extent specified therein and Clause 27 *(Remedial Adviser)*.

- 8.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 8.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 8.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 8.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 8.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 8.7 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 8.6, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Promoting Tax Compliance

- 8.8 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D – CONTRACT GOVERNANCE

9 GOVERNANCE

- 9.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

- 9.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 9.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 12 (*Supplier Personnel*).
- 9.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

10 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 10.1 The Supplier shall comply with the provisions of:
 - (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.4 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 10.2 The Parties shall comply with the provisions of:
 - (a) Part B of Schedule 7.4 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - (b) Part C of Schedule 7.4 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

11 CHANGE

Change Control Procedure

- 11.1 With the exception of Changes to Charges of Characterization Study (*Schedule, 7.1, Part D, Annex 1*), any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

- 11.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 11.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 11.2(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone; and
 - (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Charges.
- 11.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 11.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

12 SUPPLIER PERSONNEL

- 12.1 The Supplier shall:
- (a) Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
 - (b) ensure that all Supplier Personnel:

- (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice; and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises;
 - (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
 - (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and
 - (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.; and
 - (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.
- 12.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 12.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 12.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 12.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;

- (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

12.6 The Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

The Parties agree that:

- (A) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- (B) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

- 12.7 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

- (a) 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
- (b) 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 in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

- 12.8 The Parties do not envisage that the provisions of the Employment Regulations shall apply to this Agreement. If and to the extent that the provision of the Services results in the Employment Regulations becoming so applicable, the Parties agree to take such steps as are necessary to ensure each Party's compliance with them.

13 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 13.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 13.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 13.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 13.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract (subject to the sub-contractor's consent); and

(b) any further information reasonably requested by the Authority.

13.4 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 13.2 (or, if later, receipt of any further information requested pursuant to Clause 13.3), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 13.17 (*Termination of sub-contracts*);

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

13.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 13.2; and
 - (ii) any further information requested by the Authority pursuant to Clause 13.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 13.6 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.3 (*Third Party Contracts*).

Appointment of Key Sub-contractors

13.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 13.17 (*Termination of sub-contracts*).
- 13.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.2 (*Key Sub-contractors*).
- 13.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) substantially similar provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without payment by the Authority;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 18 (*Authority Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 4.5(k) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.4 (*Financial Reports and Audit Rights*);
 - (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1(a) (*Termination by the Authority*) and 32.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;

- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (*Remedial Adviser*);
- (i) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and

13.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

13.10 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier'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 Agreement) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 13.10 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 Agreement.

13.11 The Supplier shall:

- (a) 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;
- (b) produce a Balanced Scorecard Report and include within it a summary of its compliance with Clause 13.11(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

13.12 Without prejudice to Clause 13.11(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report a summary of its compliance with Clause 13.12(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

13.13 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall within 15 Working Days of submission of the latest Balanced Scorecard Report provide the Authority with an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- (b) actions to address each of the causes set out in sub-paragraph 13.13(a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

13.14 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is provided to the Authority.

13.15 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

- 13.16 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 13.17 The Authority may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1(b) (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 13.22; and
 - (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed, such consent not to be unreasonably withheld or delayed.

Competitive Terms

- 13.18 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

- (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 13.19 If the Authority exercises either of its options pursuant to Clause 13.18, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 13.20 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 13.21 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 13, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

- 13.22 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
 - (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 Except as expressly set out in this Agreement:
 - (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (i) the Third Party IPRs; and
 - (ii) the Supplier Background IPRs; and
 - (iii) [REDACTED];
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the Authority Background IPRs;
 - (c) Project Specific IPRs (including for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
- 14.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 14.1, it hereby does assign and where such Intellectual Property Rights cannot be prospectively assigned, shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 14.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

15 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Project Specific IPRs

- 15.1 The Supplier hereby transfers to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 14.1(a) (*Intellectual Property Rights*)) in the Project Specific IPRs. For clarity, all Intellectual Property Rights in Goods, including the Challenge Virus shall be deemed Project Specific IPR, including where such Intellectual Property Rights arose for the delivery of the Services before the Effective Date.
- 15.2 The Supplier:
- (a) shall without prejudice to Clause 15.10 (*Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are an integral part of any element of Project Specific IPRs;
 - (b) shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority.

Supplier Background IPRs

- 15.3 The Supplier hereby grants to the Authority a perpetual, fully paid-up, royalty-free, sub-licensable through multiple tiers, non-exclusive licence to use the Supplier Background IPRs (but excluding all [REDACTED] Data) for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business

or function. The Authority may not sub-license, transfer or publish any such Supplier Background IPRs beyond the purpose of this Agreement, without the Supplier's prior written consent.

[REDACTED] Data

15.4 [REDACTED]

15.5 [REDACTED]

Authority's right to sub-license

- 15.6 The Authority may sub-license the rights granted under Clauses 15.3 (*Supplier Background IPRs*) and 15.4 ([REDACTED] *Data*) to a third party (including for the avoidance of doubt, any Approved Sub-Licensee or Replacement Supplier) provided that:
- (a) the sub-license is on terms no broader than those granted to the Authority; and
 - (b) the sub-licensee shall have executed a confidentiality undertaking on terms no less stringent than as set out in Clause 18 (*Confidentiality*).

Authority's right to assign/novate licences

- 15.7 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clauses 15.3 (*Supplier Background IPRs*) and 15.4 ([REDACTED] *Data*) to:
- (a) A Central Government Body; or
 - (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 15.8 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clauses 15.3 (*Supplier Background IPRs*) and 15.4 ([REDACTED] *Data*). If the

Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clauses 15.3 (*Supplier Background IPRs*) and 15.4 (██████████ *Data*).

- 15.9 If a licence granted in Clauses 15.3 (*Supplier Background IPRs*) and 15.4 (██████████ *Data*) is novated under Clause 15.7 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Clause 15.8, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party IPRs

- 15.10 Other than Third Party IPRs already disclosed to the Authority in accordance with Clause 15.2(a), the Supplier shall not use in the provision of the Services any Third Party IPRs unless it has either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party IPRs has granted a direct licence to the Authority on a royalty-free basis and on terms no less favourable to the Authority than those set out in Clauses 15.3 (*Supplier Background IPRs*), 15.4 (██████████ *Data*), and Clause 15.7 (*Authority's right to assign/novate licences*); or
 - (b) complied with the provisions of Clause 15.11.
- 15.11 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party IPRs in accordance with the licence terms set out in Clause 15.10(a), the Supplier shall:
- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (b) use the relevant Third Party IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 15.12 Should the Supplier become aware at any time, including after termination, that the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 15.13 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 15.

16 LICENCES GRANTED BY THE AUTHORITY

- 16.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPRs, the Project Specific IPRs and the Authority Data solely to the extent necessary for

performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier with respect to such Authority Background IPRs, the Project Specific IPRs and the Authority Data on the same terms as set out in Clause 19 (*Confidentiality*); and
- (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

16.2 The Authority hereby grants to the Supplier a perpetual, sub-licensable through multiple tiers, non-exclusive, royalty-free, licence to use its Project Specific IPR for any purpose relating to the Supplier's business. The Authority shall use all reasonable endeavours to obtain a license in favour of Supplier, on similar terms to the license granted by the Authority under this Clause 16.2, in respect of all other Project Specific IPR not owned by the Authority, if any.

16.3 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Authority pursuant to Clause 16.2.

17 IPRS INDEMNITY

17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iii) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2(a) or to modify or replace an item pursuant to Clause 17.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system and complies with Schedule 2.7 (*Security*).
- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to

the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

18.9 The Supplier shall comply with the provisions of Schedule 2.7 (*Security*).

19 **CONFIDENTIALITY**

19.1 For the purposes of this Clause 19:

- (a) the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information;
- (b) "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information; and
- (c) Confidential Information shall include any information disclosed by the Parties under the confidentiality agreement signed by them on 17 June 2020 (the "**CDA**") and the provisions of this Clause 19 shall supersede the provisions of the CDA with respect to such information.

19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) 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.

19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:

- (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
- (c) 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.

19.4 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.

19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- (b) its auditors;
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement; and
- (d) Subcontractors, subject to the conditions of Clause 13 (*Supply Chain Rights and Protections*).

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

19.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6(a) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or
- (f) 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 this Agreement,

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 19.

- 19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

20 **TRANSPARENCY AND FREEDOM OF INFORMATION**

- 20.1 The Parties acknowledge that:

- (a) the Transparency Reports;
- (b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information; and
- (c) the Publishable Performance Information

(together the “**Transparency Information**”) are not Confidential Information.

- 20.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication

and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).
- 20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 20.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) 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 EIRs.

21 PROTECTION OF PERSONAL DATA

Status of the Controller

- 21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) "Controller" (where the other Party acts as the "Processor");
 - (b) "Processor" (where the other Party acts as the "Controller");
 - (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
 - (d) "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 11 (Processing Personal Data) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 21.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (Processing Personal Data) by the Controller.
- 21.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 21.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 11 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 18 (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 19 (*Confidentiality*) and 18 (*Authority Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the

Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

21.6 Subject to Clause 21.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

- 21.7 The Processor's obligation to notify under Clause 21.6 shall include the provision of further information to the Controller in phases, as details become available.
- 21.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 21.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 21.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;

- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 21.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 21.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 1 to Schedule 11 (*Processing Personal Data*).

Where the Parties are Independent Controllers of Personal Data

- 21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- 21.21 The Parties shall only provide Personal Data to each other:
 - (a) to the extent necessary to perform the respective obligations under this Agreement;

- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 11 (*Processing Personal Data*).
- 21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 21.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 21.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (**“the Request Recipient”**):
 - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 21.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
 - (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;

- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Processing Personal Data*).
- 21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Processing Personal Data*).
- 21.28 Notwithstanding the general application of Clauses 21.2 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.16 to 21.17.

22 **PUBLICITY AND BRANDING**

- 22.1 The Authority will establish a Project Communications Team (the "**PCT**") to create, develop, execute and oversee a Project Communications Plan (the "**PCP**") for making public certain information about the Project at appropriate times based on a clear and detailed project narrative ("**Narrative**"). Each Party shall be entitled to have at least two (2) representatives on the PCT (with each Party having one (1) vote) and direct input into the creation, development, execution and oversight of the PCP. The PCP shall specifically provide for how each Party will be permitted to disclose information about the Project to the extent necessary to comply with its legal disclosure obligations and its commercial or other interests. Each Party shall not (and procures that its Affiliates shall not) make any press announcements or publicise this Agreement or the any aspect of the Project other than in accordance with the PCP and the Narrative. Each Party also undertakes not to make any press communication or publicise this Agreement or any aspect of the Project pertaining to any of the other Parties' activities, roles and responsibilities. The Supplier may nominate, at its sole discretion, two (2) spokespersons to represent it in any communication or publicity concerning this Agreement or any aspect of the Project.
- 22.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

23 LIMITATIONS ON LIABILITY

Unlimited liability

23.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

23.2 The Supplier's liability in respect of the indemnities in Clause 8.5 (VAT), Clause 12.7 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*), shall be unlimited.

Financial and other limits

23.3 Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*) and Clauses 23.6 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) the Supplier'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 Supplier occurring in each and any Contract Year shall in no event exceed £10 million; and
- (c) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed an amount equal to 150% of the Charges paid or due to be paid under this Agreement, provided that where any Losses referred to this Clause 23.3(c) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

- 23.4 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.3(c).
- 23.5 Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*) and Clause 23.6 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
 - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and
 - (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed an amount equal to the Charges paid or due to be paid under this Agreement.

Consequential Losses

- 23.6 Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*) and Clause 23.7, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.7 Notwithstanding Clause 23.6 but subject to Clause 23.3, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) 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;
 - (b) any wasted expenditure or charges;
 - (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or

replacement Deliverables above those which would have been payable under this Agreement;

- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Conduct of indemnity claims

- 23.8 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 23.9 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

24 INSURANCE

- 24.1 The Supplier shall comply with the provisions of Schedule 2.6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

25 RECTIFICATION PLAN PROCESS

- 25.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

25.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 25.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

25.3 The “**Rectification Plan Process**” shall be as set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

25.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

25.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

25.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;

- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

25.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

25.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

26 NOT USED

27 REMEDIAL ADVISER

27.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 27.1 prior to or instead of exercising its right to terminate this Agreement.

27.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Authority;
or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
 - (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
 - (c) any right of the Authority to terminate this Agreement pursuant to Clause 31.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).
- 27.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 27.4 The Supplier shall:
- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;

- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

27.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 27.

27.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause 27.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a **"Remedial Adviser Failure"**), the Authority shall be entitled to terminate this Agreement pursuant to Clause 31.1(b) (Termination by the Authority).

28 NOT USED

29 AUTHORITY CAUSE

29.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date; or
- (b) comply with its obligations under this Agreement,

(each a **"Supplier Non-Performance"**),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 29):

- (i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
 - (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Agreement pursuant to Clause 31.1(b) (*Termination by the Authority*); or
 - (B) to take action pursuant to Clauses 27 (*Remedial Adviser*);
 - (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (B) if the Authority, acting reasonably, considers it appropriate, the Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause.
- 29.2 In order to claim any of the rights and/or relief referred to in Clause 29.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:
 - (a) the Supplier Non-Performance;
 - (b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement; and
 - (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause.
- 29.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause, consulting with the Supplier where necessary.
- 29.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 29.5 Without prejudice to Clause 4.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to whether a Supplier Non-Performance would not have occurred but for an Authority Cause, either Party may refer the Dispute to the

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

- 29.6 Any Change that is required to the Project Plan or to the Charges pursuant to this Clause 29 shall be implemented in accordance with the Change Control Procedure.

30 **FORCE MAJEURE**

- 30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated, but the Supplier has failed to do so;
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

- 30.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 31.1(c) (*Termination by the Authority*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (iii) the Supplier fails to perform its obligations in accordance with this Agreement; the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 27 (*Remedial Adviser*) as a result of such failure;
 - (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 30.8 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 30.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

31 TERMINATION RIGHTS

Termination by the Authority

- 31.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
 - (b) if a Supplier Termination Event occurs;

- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

31.2 Where the Authority:

- (a) is terminating this Agreement under Clause 31.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 31.1(b) or Clause 31.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

- 31.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £250,000 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier.

32 **CONSEQUENCES OF EXPIRY OR TERMINATION**

General Provisions on Expiry or Termination

- 32.1 The provisions of Clauses 8.4 and 8.5 (VAT), 8.6 and 8.7 (*Set-off and Withholding*), 10 (*Records, Reports, Audits and Open Book Data*), 12.7 (*Income Tax and National Insurance Contributions*), 14 (*Intellectual Property Rights*), 15 (*Transfer and Licences Granted by the Supplier*), 16 (*Licences Granted by the Authority*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 2 (*Services*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.4 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), shall survive the termination or expiry of this Agreement.

Exit Management

- 32.2 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 32.3 If this Agreement is terminated by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:
 - (i) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 31.3 (*Termination by the Supplier*) to (and including) the Termination Date.

- 32.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1(b), 31.1(c) and/or 31.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

- 32.5 The costs of termination incurred by the Parties shall lie where they fall if the Authority terminates this Agreement under Clause 31.1(c), 31.1(d) or 31.2(b) (*Termination by the Authority*).

Payments by the Supplier

- 32.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination (with the exception of the Reservation Fees, which shall be subject to the provisions of Schedule 2 (*Services*) and Schedule 7 (*Financial Matters*)).

- 32.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 31.1(b) (*Termination by the Authority*) prior to Achievement of one or more Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each Milestone to which the Milestone Adjustment Payment Notice relates.
- 32.8 A Milestone Adjustment Payment Notice shall specify:
- (a) each Milestone to which it relates;
 - (b) in relation to each such Milestone, each Deliverable relating to that Milestone that the Authority wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
 - (c) those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),
- and may form part of a Termination Notice.
- 32.9 The Supplier shall within 20 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
- (a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
 - (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
 - (c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
 - (d) provide the Authority with such supporting information as the Authority may require.
- 32.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 60 Working Days of the Supplier's receipt of the relevant Milestone

Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

32.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 32.7:

- (a) the Authority shall:
 - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

33 COMPLIANCE

Health and Safety

33.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

33.3 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) 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; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

33.4 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

Non-solicitation

33.5 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 (or its affiliates) in the provision or receipt of Services under this Agreement, at any time during the Term, or for a further period of twelve (12) months after expiry or termination of this Agreement, 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 or its affiliates.

34 ASSIGNMENT AND NOVATION

34.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

34.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.

- 34.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 34.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

35 **WAIVER AND CUMULATIVE REMEDIES**

- 35.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 35.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

36 **RELATIONSHIP OF THE PARTIES**

- 36.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, 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.

37 **PREVENTION OF FRAUD AND BRIBERY**

- 37.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

- (a) 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
- (b) 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.

37.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) 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.

37.3 The Supplier shall during the term of this Agreement:

- (a) 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;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 37.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) 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
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or

otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 10 (*Records, Reports, Audits and Open Book Data*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

38 **SEVERANCE**

- 38.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 38.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 38.3.

39 **FURTHER ASSURANCES**

- 39.1 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 this Agreement.

40 **ENTIRE AGREEMENT**

- 40.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 40.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 **THIRD PARTY RIGHTS**

- 41.1 The provisions of Clause 17.1 (*IPRs Indemnity*) and the provisions of Paragraph 6.7 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 41.2 Subject to Clause 41.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 41.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42 **NOTICES**

- 42.1 Any notices sent under this Agreement must be in writing.
- 42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
--------------------	------------------------	------------------

EXECUTION VERSION – HVIVO SERVICES AGREEMENT

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

- 42.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact	[REDACTED]	The Secretary of State
Address	Queen Mary Bioenterprises Innovation Centre, 42 New Road London E1 2AX	Department For Business, Energy and Industrial Strategy 1 Victoria Street London SW1H 0ET
Email	[REDACTED]	[REDACTED]

- 42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

- (a) Force Majeure Notices;

- (b) notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);
- (c) Termination Notices; and
- (d) Dispute Notices.

42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

42.6 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

43 **DISPUTES**

43.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

43.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

44 **GOVERNING LAW AND JURISDICTION**

44.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

44.2 Subject to Clause 43 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of hVIVO)
Services Limited by [REDACTED]
(Executive Chairman of Open Orphan
PLC)

[REDACTED]
Executive Chairman of Open Orphan PLC

SIGNED for and on behalf of)
Department For Business, Energy and)
Industrial Strategy)

[REDACTED]
Director General, Vaccine Task Force

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 1

DEFINITIONS

Definitions

- 1.1 Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements;
“Achieve”	means, in respect of a Milestone, the achievement of a Milestone in accordance with the Specifications, and “Achieved” and “Achievement” shall be construed accordingly;
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Allowable Price Adjustment”	has the meaning given in Clause 32.8(c) (<i>Payments by the Supplier</i>);
“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <p>(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and</p>

	(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
“Approved Sub-Licensee”	any of the following: <ul style="list-style-type: none">(a) a Central Government Body;(b) any third party providing services to a Central Government Body; and/or(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 10 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.4 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	(a) the Authority’s internal and external auditors;

- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

"Audit Rights"

the audit and access rights referred to in Schedule 7.4 (*Financial Reports and Audit Rights*);

"Authority Assets"

the Authority Materials, the Authority infrastructure and any other data, software, assets, material, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

"Authority Background IPRs"

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

"Authority Cause"

any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-

	contractor or any Supplier Personnel;
“Authority Data”	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p>(b) any Personal Data for which the Authority is the Data Controller;</p>
“Authority Materials”	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Authority; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services;</p>
“Authority Premises”	premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“Authority Representative”	the representative appointed by the Authority pursuant to Clause 9.4 (<i>Representatives</i>);
“Authority Requirements”	the requirements of the Authority set out in Schedules Schedule 2, Schedule 8.4 (<i>Reports and Records Provisions</i>), Schedule 8.5 (<i>Exit Management</i>) and Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Authority Responsibilities”	the responsibilities of the Authority specified in Schedule 2.4(<i>Responsibilities</i>);
"Balanced Scorecard Report"	means a report created by the Supplier to the Authority's senior responsible officer which summarises the Supplier's performance over the relevant Service Period including details of financial indicators, behavioural indicators,

	its performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice and its performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
“Board”	means the Supplier's board of directors;
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Central Government Body”	<p>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:</p> <ul style="list-style-type: none"> (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;
“Certificate of Costs”	has the meaning given in Schedule 7 (<i>Charges and Invoicing</i>);
“Change”	any change to this Agreement;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes

into force after the Effective Date;

“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7 (<i>Charges and Invoicing</i>), including any Milestone Payment
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	<p>information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none">(a) the pricing of the Services;(b) details of the Supplier’s IPRs; and(c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Condition Precedent”	has the meaning given in Clause 3.2 (<i>Condition Precedent</i>);
“Confidential Information”	<ul style="list-style-type: none">(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:<ul style="list-style-type: none">(i) the Disclosing Party Group; or(ii) the operations, business,

affairs, developments,
intellectual property rights, trade
secrets, know-how and/or
personnel of the Disclosing
Party Group;

- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the

	time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the Supplier's:
	(1) performance under this Agreement; or
	(2) failure to pay any Sub-contractor as required pursuant to Clause 13.12(a) (<i>Supply Chain Protection</i>);
“Contract Change”	any change to this Agreement other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
“Contract Year”	<p>(a) a period of 12 months commencing on the Effective Date; or</p> <p>(b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the GDPR;
“Corporate Change Event”	means:
	(a) any change of Control of the Supplier or a Parent Undertaking of the

Supplier;

- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;

- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Resolution Planning Information”

means, together, the:

- (a) Group Structure Information and Resolution Commentary; and
- (b) UK Public Sector and CNI Contract Information;

“Costs”

has the meaning given in Schedule 7 (*Charges and Invoicing*);

“Critical National Infrastructure”

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on the national security, national defence, or the functioning of the UK;

“Critical Service Contract”

means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none">(a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;(c) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;
“Data Subject Request”	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;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none">(a) in the case of the Authority, of its employees, servants, agents; or(b) in the case of the Supplier, of its Sub-contractors, Key Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-</p>

matter of this Agreement and in respect of which such Party is liable to the other;

“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the delivery of a Deliverable by the relevant date set out in the Project Plan;</p>
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Deliverable”	an item, Goods or Service delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Disclosing Party”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;</p>
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in

	accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“DPA”	the Data Protection Act 2018;
“Effective Date”	<p>the later of:</p> <ul style="list-style-type: none">(a) the date on which this Agreement is signed by both Parties; and(b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 3.2 (<i>Condition Precedent</i>);
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for

any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations" the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

"Environmental" the policies and/or procedures identified in

Requirements"	Schedule 2.5 (<i>Environmental Requirements</i>);
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert"	has the meaning given in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Financial Model"	has the meaning given in Schedule 7.4 (<i>Financial Reports and Audit Rights</i>);
"Financial Reports"	has the meaning given in Schedule 7.4 (<i>Financial Reports and Audit Rights</i>);
"Financial Transparency Objectives"	has the meaning given in Schedule 7.4 (<i>Financial Reports and Audit Rights</i>);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-

happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

“Force Majeure Notice”

a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

“GDPR”

The General Data Protection Regulation (EU) 2016/679;

“General Anti-Abuse Rule”

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

“General Change in Law”

a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

“Good Industry Practice”

at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“Goods”

means the goods delivered by the Supplier in accordance with this Agreement and as described in Schedule 2.1, and which for clarity shall include the Challenge Virus, GLP

	Viral Stock and the Authority's proportion of the Residual Viral Stock;
“Group Structure Information and Resolution Commentary”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 1 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
“Guarantor”	Open Orphan PLC, a company registered in England and Wales with company number 07514939 and whose registered office is at Queen Mary Bioenterprises Innovation Centre, 42, New Road, London, England, E1 2AX;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Human Challenge Steering Committee”	the body established by the Authority to provide operational governance of the Project;
“Impact Assessment”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect

sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;

“Independent Control”

where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;

“Information”

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);

“Insolvency Event”

with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose

of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating

	charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
	(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
	(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in data, databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Intervention Cause”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Notice”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 27.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	(a) any event falling within limb (a), (b), (d), (e) or (f) of the definition of a Supplier Termination Event;

- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; and/or
- (c) the Supplier not Achieving a Milestone by its relevant Milestone Date;

“IPRs Claim”

any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;

“Joint Controllers”

where two or more Controllers jointly determine the purposes and means of processing;

“Key Personnel”

those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 12.5 and 12.6 (*Key Personnel*);

“Key Roles”

a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 12.4 (*Key Personnel*);

“Key Sub-contract”

each Sub-contract with a Key Sub-contractor;

“Key Sub-contractor”

any Sub-contractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or

- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

“Know-How”

all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;

“Law”

any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“LED”

Law Enforcement Directive (*Directive (EU) 2016/680*);

“Lease”

the lease between (1) Royal Free London NHS Foundation Trust and (2) Secretary of State for Housing, Communities and Local Government, dated on or around the same date as the Project Collaboration Agreement;

“Losses”

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

“Management Information”

the management information specified in Schedule 2.2 (*Performance Levels*), Schedule 7 (*Charges and Invoicing*) and Schedule 8 (*Governance*) to be provided by the Supplier to the Authority;

"Milestone"	an event or task described in Annex 1 of Schedule 7.1 which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Adjustment Payment Amount"	<p>in respect of each Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that Milestone; and</p> <p>(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that Milestone or, if there are no such Retained Deliverables, zero;</p>
"Premises"	means rooms [REDACTED] Royal Free Hospital, Pond Street, Hampstead, NW3 2QG;
"Milestone Adjustment Payment Notice"	has the meaning given in Clause 32.7 (<i>Payments by the Supplier</i>);
"Milestone Date"	the target date set out against the relevant Milestone in Annex 1 of Schedule 7.1 by which the Milestone must be Achieved;
"Milestone Payment"	a payment identified in Schedule 7 (<i>Charges and Invoicing</i>) to be made following the Achievement of a Milestone;
"Milestone Retention"	has the meaning given in Schedule 7 (<i>Charges and Invoicing</i>);
"month"	a calendar month and " monthly " shall be interpreted accordingly;
"Multi-Party Dispute"	has the meaning given in Paragraph 9.1 of

Resolution Procedure	Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Non-retained Deliverables”	in relation to a Milestone Payment Notice and each Milestone the subject of that Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant Milestone(s) and which are not Retained Deliverables;
“Notifiable Default”	shall have the meaning given in Clause 25.1 (<i>Rectification Plan Process</i>);
“Occasion of Tax Non-Compliance”	<ul style="list-style-type: none">(a) any tax return of the Supplier 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:<ul style="list-style-type: none">(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation 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 Supplier 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 Supplier 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 Effective Date or to a civil penalty for fraud or evasion;

“Open Book Data”	has the meaning given in Schedule 7.4 (<i>Financial Reports and Audit Rights</i>);
“Operational Change”	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none">(a) will not affect the Charges and will not result in any other costs to the Authority;(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and(c) will not require a change to this Agreement;
“Optional Services”	means the services described as such in Schedule 2 (<i>Services Description</i>) which are to be provided by the Supplier if requested by the Authority in accordance with Clauses 4.9 and 4.10 (<i>Optional Services</i>);
“Other Supplier”	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2(b) (<i>Termination by the Authority</i>) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;

"Processor"	has the meaning given to it under the GDPR;
"Processor Personnel"	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
"Project"	means the project agreed between the Parties to conduct GMP manufacture of SARS-CoV-2 virus generated from isolates, and design and carry out a study to characterise such virus in a human characterisation study (which will be conducted in accordance with GCP) to enable the development of a human challenge model specific to SARS CoV-2;
"Project Collaboration Agreement"	the Agreement entered into by the Supplier, the Authority, Imperial College and Royal Free on the same date as this Agreement and which provides for the governance framework of the Project;
"Project Partners"	means the Authority, Imperial College, Royal Free London NHS Foundation Trust and the Supplier;
"Project Plan"	the detailed Project plan set out in Schedule 2.3 and developed and revised by the Authority in consultation with the Supplier from time to time (<i>Project Plan</i>);
"Prohibited Act"	<ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">(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;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of

a relevant function or activity in connection with this Agreement;

- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures”

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Project Specific IPRs”

- (a) Intellectual Property Rights in items (including the Deliverables and Project Specific Study Data) arising from the performance of this Agreement; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include (i) the Supplier Background IPRs; (ii) [REDACTED]; and (iii) any IPR pertaining to challenge studies, which IPR shall be defined under specific agreements covering such challenge studies,

	if applicable;
"Project Specific Study Data"	data (other than Personal Data) arising under this Agreement excluding [REDACTED] and including but not limited to [REDACTED] for the Human Virus Characterisation Study;
"Public Sector Dependent Supplier"	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
"Public Sector and CNI Contract Information"	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
"Quarter"	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
"Records"	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
"Rectification Plan"	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Rectification Plan Failure"	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (<i>Submission of the draft Rectification Plan</i>) or 28.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (<i>Agreement of the Rectification Plan</i>);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:</p> <p>(i) 30 Working Days of a</p>

	notification made pursuant to Clause 25.2 (<i>Notification</i>); and
	(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
	(d) the Supplier not Achieving a Milestone by the expiry of the Delay Deduction Period; and/or
	(e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
“Rectification Plan Process”	the process set out in Clauses 25.4 (<i>Submission of the draft Rectification Plan</i>) to 25.9 (<i>Agreement of the Rectification Plan</i>);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement;
“Relevant Requirements”	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;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relief Notice”	has the meaning given in Clause 19.2 (<i>Authority Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 27.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 27.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Reservation Fee”	means the Milestone Payments described in Table 6.3 of Annex 1 of Schedule 7.1;
“Retained Deliverables”	has the meaning given in Clause 32.8(b) (<i>Payments by the Supplier</i>);
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2 (<i>Services Description</i>);
“Service Transfer Date”	NOT USED;

“Services Description”	the services description set out in Schedule 2 (<i>Services Description</i>);
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services;</p>
“Specifications”	the specifications for the Services, Deliverables and Goods, as described in Schedule 2.1;
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staffing Information”	NOT USED;
“Standards”	means the standards described in Schedule 2.1;
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	<p>any third party with whom:</p> <p>(a) the Supplier enters into a Sub-contract; or</p>

	<p>(b) a third party under (a) above enters into a Sub-contract,</p> <p>or the servants or agents of that third party;</p>
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 34.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing and/or providing the Services;</p>
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 9.3 (<i>Representatives</i>);
“Supplier Termination Event”	<p>(a) the Supplier committing a material Default which is irremediable;</p> <p>(b) as a result of the Supplier's Default,</p>

the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.6(a) (*Financial and other Limits*);

- (c) a Remedial Adviser Failure;
- (d) a Rectification Plan Failure;
- (e) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 17 (*IPRs Indemnity*);
 - (ii) Clause 37.6(b) (*Prevention of procurement of Fraud and Bribery*); and/or
 - (iii) Paragraph 12 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (f) the representation and warranty given by the Supplier pursuant to Clause 2.2(i) (*Warranties*) being materially untrue or misleading;
- (g) the Supplier committing a material Default under Clause 8.8 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 8.8 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (h) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 4.5(j) (*Services*);
 - (ii) Clause 21 (*Protection of Personal Data*);
 - (iii) Clause 20 (*Transparency and Freedom of Information*);
 - (iv) Clause 19 (*Confidentiality*); and

	<p>(v) Clause 33 (<i>Compliance</i>); and/or</p> <p>in respect of any security requirements set out in Schedule 2 (<i>Services Description</i>), Schedule 2.7 (<i>Security</i>); and/or</p>
	<p>(i) an Insolvency Event occurring in respect of the Supplier or the Guarantor;</p>
	<p>(j) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);</p>
	<p>(k) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;</p>
	<p>(l) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;</p>
“Term”	has the meaning set out in Clause 3 (<i>Term</i>);
“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party

	receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 4 of Schedule 8.5 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party IPRs”	Intellectual Property Rights owned by a third party with the exception of any IPR in devices providing [REDACTED];
“Third Party Provisions”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Transferring Assets”	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Authority Employees”	NOT USED;
“Transferring Former Supplier Employees”	NOT USED;
“Transferring Supplier Employees”	NOT USED;
“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment

	Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“UK”	the United Kingdom;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

it in accordance with Schedule 8.4 (*Reports and Records Provisions*); and

“**[REDACTED]**”

means all data arising from the **[REDACTED]**

“**[REDACTED]**”

means the study sponsored, managed and funded by the Supplier and run concurrently with the Human Virus Characterisation Study in accordance with a regulatory approved protocol;

“Working Day”

any day other than a Saturday, Sunday or public holiday in England and Wales.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2

SCHEDULE 2.1

SERVICES DESCRIPTION

SERVICES DESCRIPTION**1 DEFINITIONS****1.1** In this Schedule, the following definitions shall apply:

"BSL-3"	means Biosafety Level 3, a level of biocontainment described in Directive 2000/54/EC as amended and implemented in the UK from time to time;
"Challenge Virus"	means the isolate of the SARS-COV-2 virus sourced, cultured and manufactured in accordance with GMP for use by the Authority in the Human Virus Characterisation Study and any Human Challenge Study. For the purpose of this Agreement, the Challenge Virus shall be considered Goods;
"Facility"	means all facilities at which the Human Virus Characterisation Study is being conducted or where Services related to the Human Virus Characterisation Study are being carried out, including the Supplier's site at [REDACTED], the quarantine facility at [REDACTED] [REDACTED] [REDACTED]
"GCP"	means Good Clinical Practice, the set of internationally recognised ethical and scientific quality requirements which must be observed for designing, conducting, recording and reporting clinical trials that involve the participation of human subjects as set forth in the International Council for Harmonisation (ICH) consolidated guidelines E6 Good Clinical Practice and implemented by Directive 2001/20/EC, as amended (the Clinical Trials Directive) and Directive 2005/28/EC (the GCP Directive) and other equivalent foreign regulations or standards, as applicable, as such standards, practices, procedures, requirements and regulations may be amended from time to time;
"GLP"	means Good Laboratory Practice, the current good laboratory practices within the meaning of Directive 2004/10/EC on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (codified version) and Directive 2004/9/EC on the

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

	inspection and verification of good laboratory practice (GLP) (codified version) (together the GLP Directives) and other equivalent regulations or standards, as applicable, as such current good laboratory practices, regulations and equivalent foreign regulations or standards may be amended from time to time;
"GLP Viral Stock"	means the isolate of the SARS-COV-2 virus sourced, cultured and manufactured in accordance with GLP by the Supplier for use by the Authority and for supply to the Project Partners and third parties;
"GMP"	means Good Manufacturing Practice in accordance with the Directive 2003/94/EC, Volume 4 of the Rules Governing Medicinal Products in the European Union and any other relevant legislation, regulations, standards or guidance, as such legislation, regulations, standards and guidance may be amended and implemented in the United Kingdom from time to time;
"HSE"	means the UK Health and Safety Executive;
"Human Virus Characterisation Study" or "Study"	means the study conducted in accordance with GCP, the Protocol and all regulatory, ethical and other requirements and laws to characterise the Challenge Virus in a safe and controlled human infection model;
"Human Vaccine Challenge Study"	means the first-in-human SARS-COV-2 virus challenge study (which will compare one vaccine candidate with a placebo using the SARS-CoV-2 model established by the Viral Characterisation study) conducted in accordance with GCP, the agreed clinical protocol and all regulatory, ethical and other requirements and laws to assess the safety and efficacy of vaccine candidates against the Challenge Virus in a safe and controlled human infection model;
"MHRA"	means the UK Medicines & Healthcare products Regulatory Agency;
"Protocol"	means the clinical protocol for the Human Virus Characterisation Study;
"QP Release"	means the release of goods by a Qualified Person in accordance with GMP;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

"Residual Viral Stock"	means the quantity of Challenge Virus remaining after completion of the Human Virus Characterisation Study and which can be used for subsequent inoculation of subjects in other studies;
"Royal Free"	means Royal Free London NHS Foundation Trust of Pond Street, London NW3 2QG; and
"Sponsor"	means Imperial College of Science Technology and Medicine of Exhibition Road, South Kensington, London SW7 2AZ.

2 SERVICES AND DELIVERABLES

WORK STREAM 1: VIRUS MANUFACTURE AND SUPPLY

Services

To undertake a Human Challenge Study with SARS-CoV-2 virus there is requirement for the manufacture and release of the Challenge Virus in accordance with GMP for use in the Human Virus Characterisation Study and Human Challenge Study. The Supplier is required to provide oversight and technical expertise at all stages of the process to deliver the Challenge Virus, including the project management expertise to manage several sub-contractors in the manufacturing and supply chain. On Release of the Challenge Virus, the Supplier must also ensure the Challenge Virus is securely stored in the appropriate facility.

Post completion of the characterisation study, [REDACTED]

The Supplier will have access to all safety data in any study within which the SARS-CoV-2 challenge virus is used, in order to ensure proper follow-up of the safety profile of the challenge agent. The Supplier reserves the right to audit any organization using the challenge agent to ensure compliance with appropriate regulatory standards.

The above applies to the entire [REDACTED] regardless of whether it is utilised by the Supplier, the Authority, or any party on their behalf. The Supplier will be involved in the classification of any safety event according to relevant regulatory standards.

Where there is a regulatory requirement to submit a Clinical Trial Application (or equivalent) to use the virus in a challenge trial, the supplier will submit the Investigational Medicinal Product Dossier (or equivalent) and Investigators Brochure (or equivalent) as a closed file to the relevant regulatory authority, where required.

The objective of this work stream is the manufacture, release, delivery and storage of the Challenge Virus in accordance with GMP for use in the Human Virus Characterisation Study and Human Challenge Study.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

In providing the Services, the Supplier will provide the following Deliverables in accordance with this Agreement:

Item	Deliverables	Timelines
1	Source clinical isolates of the prevalent SARS-COV-2 virus with the [REDACTED] UK COVID-19 patients with the appropriate patient consents for use by the Supplier and the Authority in the Project.	As per the Project Plan
2	Characterise the isolates of SARS-COV-2 virus and review the patient medical history to ensure there are no issues precluding the use of the isolates in virus seed stock manufacture. Provide at least [REDACTED] of SARS-COV-2 virus to be used in the virus seed stock manufacture.	As per the Project Plan
3	Manufacture of the isolate SARS-COV-2 virus seed stock to standard appropriate for use in the Project, including: - sourcing of appropriate cell lines; - appropriate media and reagents; and - validation of appropriate equipment.	As per the Project Plan
4	Approval of Challenge Virus manufacturing facility suitable for manufacture of the Challenge Virus [REDACTED], including obtaining appropriate authorisations, including from the MHRA and HSE.	As per the Project Plan
5	Completion of release testing of virus seed stock with a Certificate of Analysis (COA) and QA/QP Release suitable for the Challenge Virus manufacture.	As per the Project Plan
6	Source, license, test and release the chosen cell line for use in the GMP manufacture of the Challenge Virus.	As per the Project Plan
7	Manufacture of at least [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
8	Manufacture of sufficient quantities of the GLP Viral Stock including for any academic research use.	To be agreed based on discussions with parties to the Project Collaboration Agreement
9	QA/QP Release of sufficient quantities [REDACTED] of	As per the Project Plan

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

	Challenge Virus in accordance with GMP, including Certificate of Analysis (COA) for use in the Study.	
10	Manufacture and Release of [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
11	Provide agreed quantities of the agreed dose strengths of the Challenge Virus in accordance with the Protocol in pre-filled vials (for up to [REDACTED])	As per the Project Plan
12	Storage of the Residual Viral Stock in accordance with GMP in a suitable (-80C) facility for potential use by the Authority. The Supplier shall perform such routine checks of the residual Viral Stock to ensure its appropriate storage and viability.	Ongoing
13	Supply of the Challenge Virus to the Authority or its agents upon request at no additional cost.	As per the Project Plan
14	Supply of the GLP Viral Stock to the Authority or its agents upon request.	To be agreed based on discussions with parties to the Project Collaboration Agreement
15	Collation and maintenance of all dossier and safety data relating to the Challenge Virus (such data to be made available to the Authority or its agents upon request.	Ongoing
16	Project management and technical expertise to coordinate and manage the delivery of Challenge Virus in accordance with this Agreement and the Protocol including: - providing expertise in manufacture, Release and storage of the Challenge Virus for the benefit of the Authority and its nominated agents; - working with the Authority to identify alternative sources of GMP challenge viruses; - ensuring there are sufficient back-up options for each stage of the manufacture, Release and storage of the virus seed stock and Challenge Virus; - identifying potential back-up GMP manufacturing facilities if the primary facility fails.	Ongoing

In order for the Supplier to provide the Services (including the Deliverables) for Work Stream 1, the Authority shall (whether itself or through its nominated agents):

- use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff (and such personnel of its nominated agents), as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- procure for the Supplier such agreed access and use of the Facility (as a licensee only) and other facilities as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

WORK STREAM 2: HUMAN VIRUS CHARACTERISATION STUDY

Services

In collaboration with the Sponsor and other third parties appointed by the Authority, the Supplier will provide the Human Virus Characterisation Study. The Human Virus Characterisation Study will be provided in accordance with the Protocol, GCP, GLP and all appropriate regulatory, legal, ethics and HSE requirements.

For the purposes of collecting additional exploratory disease parameters related to the SARS-CoV-2 model, the characterization study clinical protocol will allow the use of a [REDACTED] to collect [REDACTED] under an additional independent protocol in a [REDACTED] [REDACTED] sponsored by the Supplier and conducted at its expense. Supplier will select the [REDACTED]

In providing the Services, the Supplier will provide the following Deliverables in accordance with this Agreement, with further details outlined in Schedule 2.4 Responsibilities:

Item	Deliverables	Timelines
1	In collaboration with the Sponsor, Royal Free and other third parties appointed by the Authority, ensure the Human Virus Characterisation Study is conducted in accordance with the Protocol, GCP, all applicable SOPs, regulations, laws and guidance.	As per the Project Plan
2	Provide appropriate scientific and operational input into the design and implementation of the Protocol.	Ongoing
3	In collaboration with the Sponsor, Royal Free and other third parties appointed by the Authority, ensure the Facility is appropriately fitted-out, equipped and available for the Human Virus Characterisation Study.	As per the Project Plan
4	Provide an appropriate number of suitably trained, qualified and experienced personnel to conduct the Human Virus Characterisation Study at the Facility.	Ongoing
5	In collaboration with the Sponsor, ensure appropriate regulatory and ethical committee approvals for the Human Virus Characterisation Study, in accordance with the Protocol, GCP and applicable laws.	As per the Project Plan

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

6	Obtain appropriate clinical trial insurance for the Human Virus Characterisation Study.	As per the Project Plan
7	Provide all appropriate project management of the Human Virus Characterisation Study for delivery of the Services.	Ongoing
8	Obtain appropriate consents and ensure that all potential subjects for the Human Virus Characterisation Study are appropriately screened and enrolled in accordance with the Protocol and GCP.	As per the Project Plan
9	Ensure sufficient numbers of subjects are screened and enrolled and complete the Human Virus Characterisation Study to deliver its objectives.	Ongoing
10	Ensure that all records are accurately made in a complete, legible and timely manner and that all source data and study records are maintained in accordance with the Protocol and GCP; such records to be made available to the Authority or its nominated agents upon request.	Ongoing
11	Ensure that all records of the Challenge Virus and any investigational medicinal products or concomitant medication administered to the subject of the Human Virus Characterisation Study are accurately recorded and maintained in accordance with the Protocol and GCP; such records to be made available to the Authority or its nominated agents upon request.	Ongoing
12	In collaboration with the Sponsor, ensure that all adverse events are recorded and reported accurately in accordance with the Protocol and applicable laws and in accordance with timeframes imposed by applicable laws; such records to be made available to the Authority or its nominated agents upon request.	Ongoing
13	Ensure that all subject of the Human Virus Characterisation Study are provided appropriate medical care and supervision, including by appropriately qualified and experienced personnel for the duration of the Human Virus Characterisation Study.	As per the Project Plan
14	Ensure that all documents essential and appropriate for the Human Virus Characterisation Study are maintained in accordance with the Protocol, GCP and applicable regulatory and legal requirements; such documents to be made available to the Authority or its nominated agents upon request.	Ongoing
15	Ensure that the Sponsor and any regulatory authorities have full access to the records and personnel for the	Ongoing

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

	purpose of monitoring and auditing the Human Virus Characterisation Study as appropriate to meet regulatory requirements.	
16	Ensure delivery of ancillary capabilities essential or appropriate for the Human Virus Characterisation Study Deliver, either itself or through carefully selected and appropriately qualified outsourced partners, including for services relating to: - pharmacovigilance; - data management; - biostatistics; - medical writing; and - clinical monitoring.	As per the Project Plan

In order for the Supplier to provide the Services (including the Deliverables) for Work Stream 2, the Authority shall (whether itself or through its nominated agents):

- use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff (and such personnel of its nominated agents), as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority;
- procure for the Supplier such agreed access and use of the Facility (as a licensee only) and other facilities as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed); and
- procure for the Supplier such agreed access and use of [REDACTED] as is reasonably required for the Supplier to comply with its obligations under this Agreement.

OPTIONAL WORK STREAM 3: HUMAN VACCINE CHALLENGE STUDIES

Optional Services

The Supplier will reserve the first three (3) study slots for the Authority to assess the efficacy of potential vaccine candidates in Human Vaccine Challenge Studies.

In providing the Optional Services if requested to do so by the Authority, the Supplier will provide the following Deliverables in accordance with this Agreement, with further details to be agreed in writing between the Parties:

Deliverables	Timelines
The first [REDACTED] study slots for the Authority to assess the efficacy of potential vaccine candidates in Human Vaccine Challenge Studies; which may comprise up to [REDACTED] across	To be confirmed

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

██████ Human Vaccine Challenge Studies.	
Such other Deliverables as are agreed between the Parties.	To be confirmed

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.2

SERVICES AND GOODS SPECIFICATIONS

SERVICES AND GOODS SPECIFICATIONS

WORK STREAM 1: VIRUS MANUFACTURE AND SUPPLY

The Specifications for the Services and Goods for Work Stream 1 are contained in Schedule 2.1 (Services)

WORK STREAM 2: VIRUS CHARACTERISATION STUDY

The Specifications for the Services and Goods for Work Stream 2 are contained in Schedule 2.1 (Services)

OPTIONAL WORK STREAM 3: VACCINE CHALLENGE STUDIES

The Specifications for the Optional Services and Goods for Work Stream 3 are contained in Schedule 2.1 (Services) and as otherwise agreed by the Parties.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

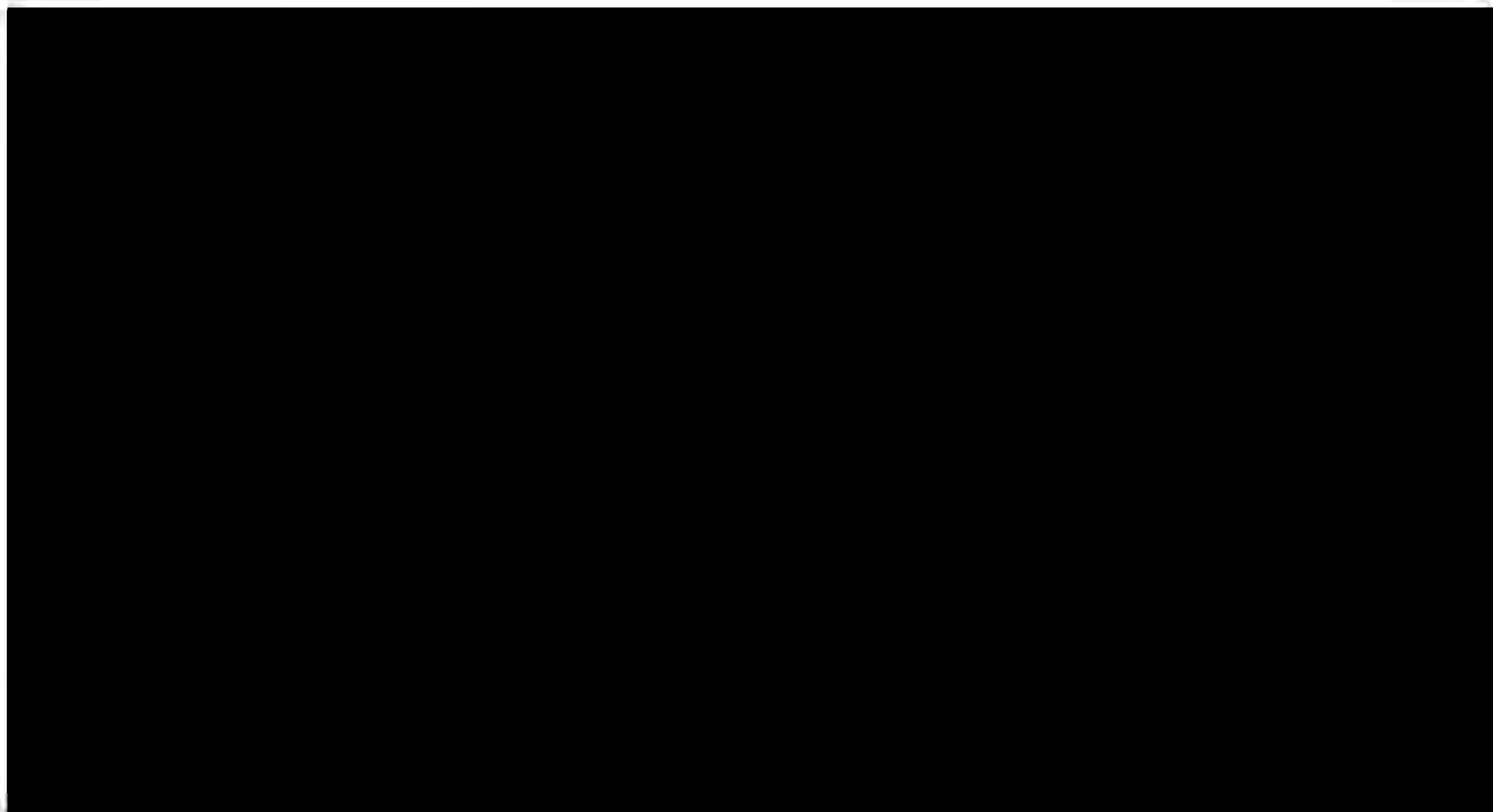
SCHEDULE 2.3

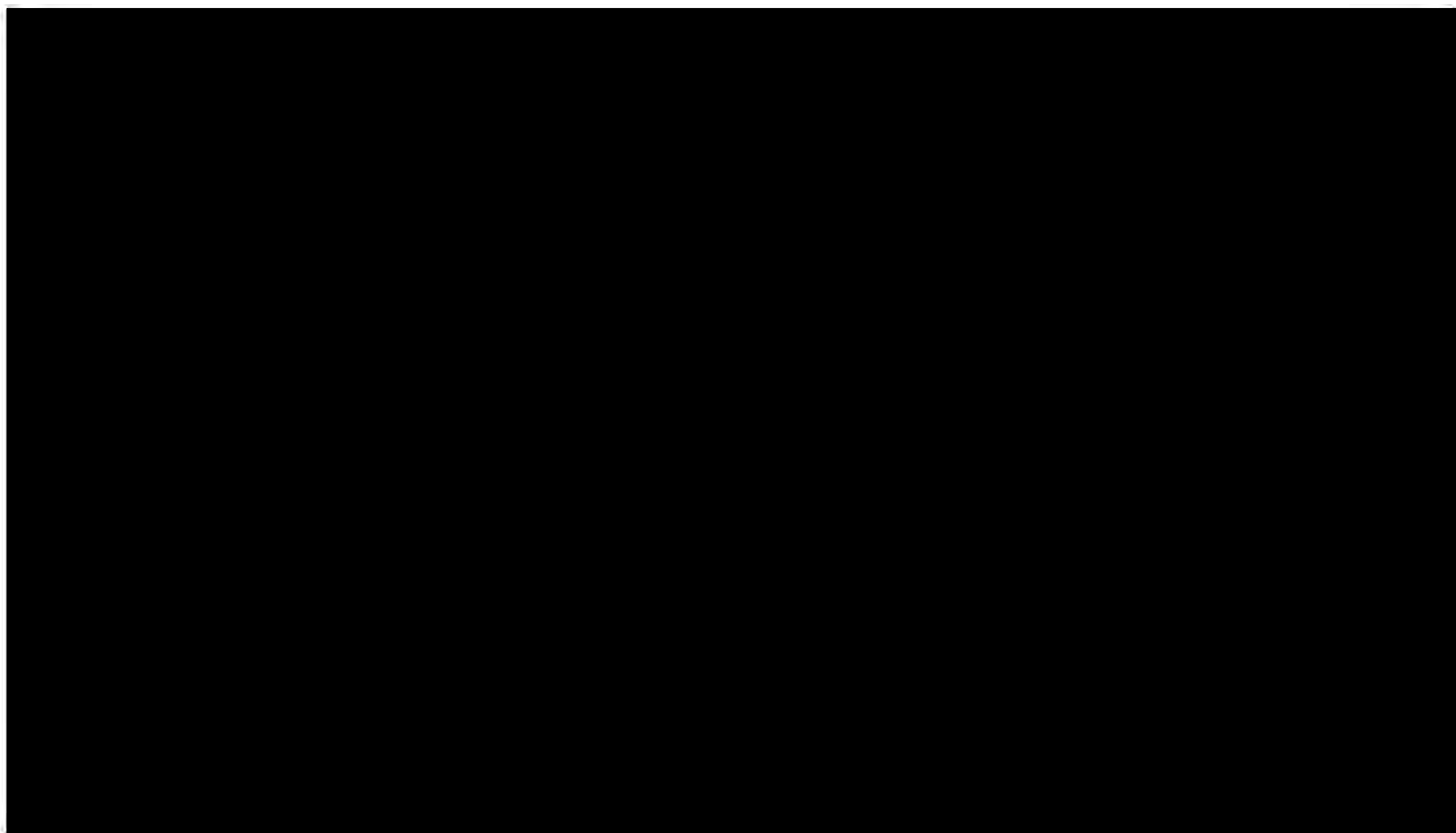
PROJECT PLAN

PROJECT PLAN

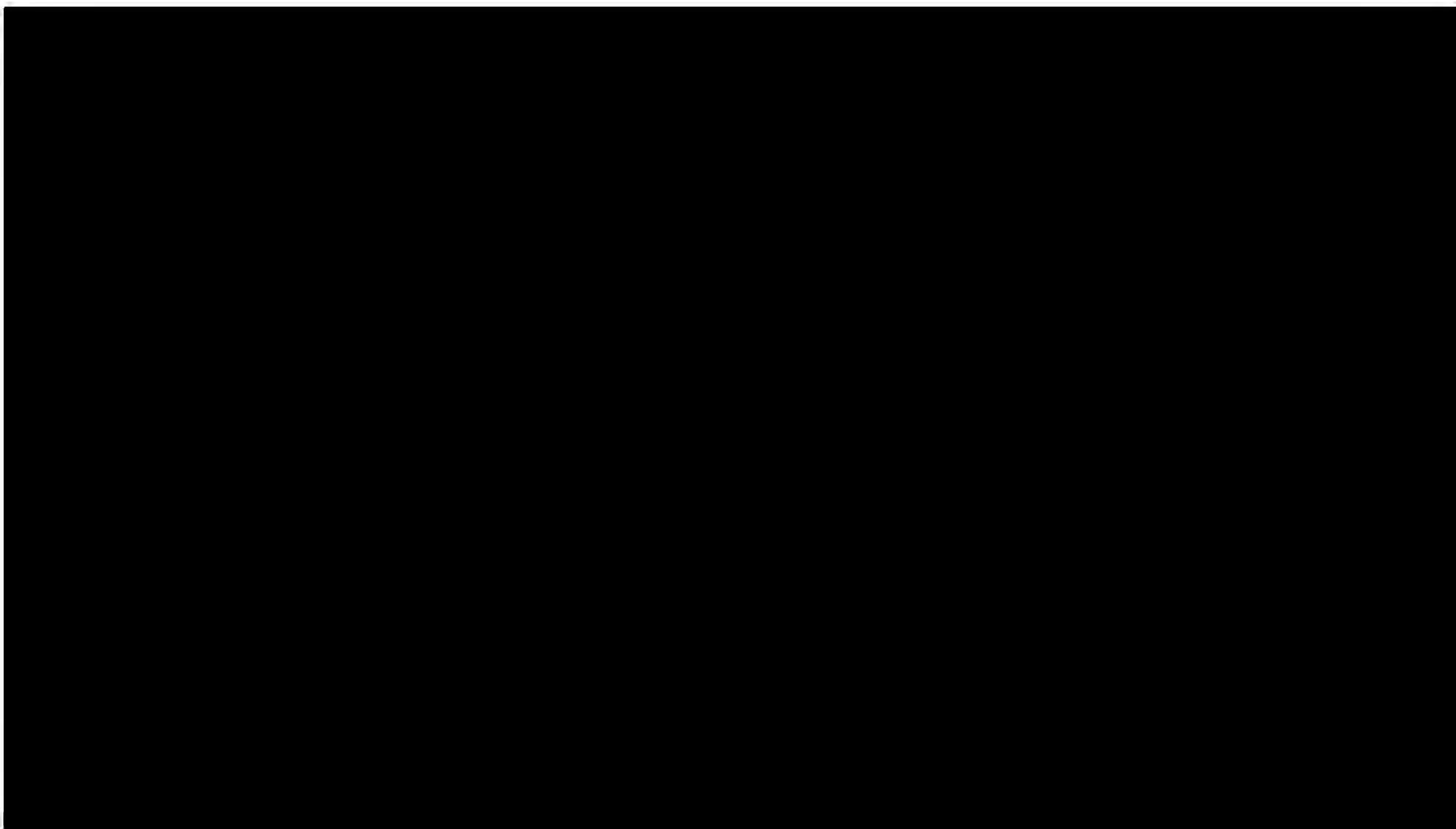
The Parties have agreed the following estimated timelines for the Deliverables for each Work Stream. Any amendment to these timelines shall be agreed in accordance with this Agreement.

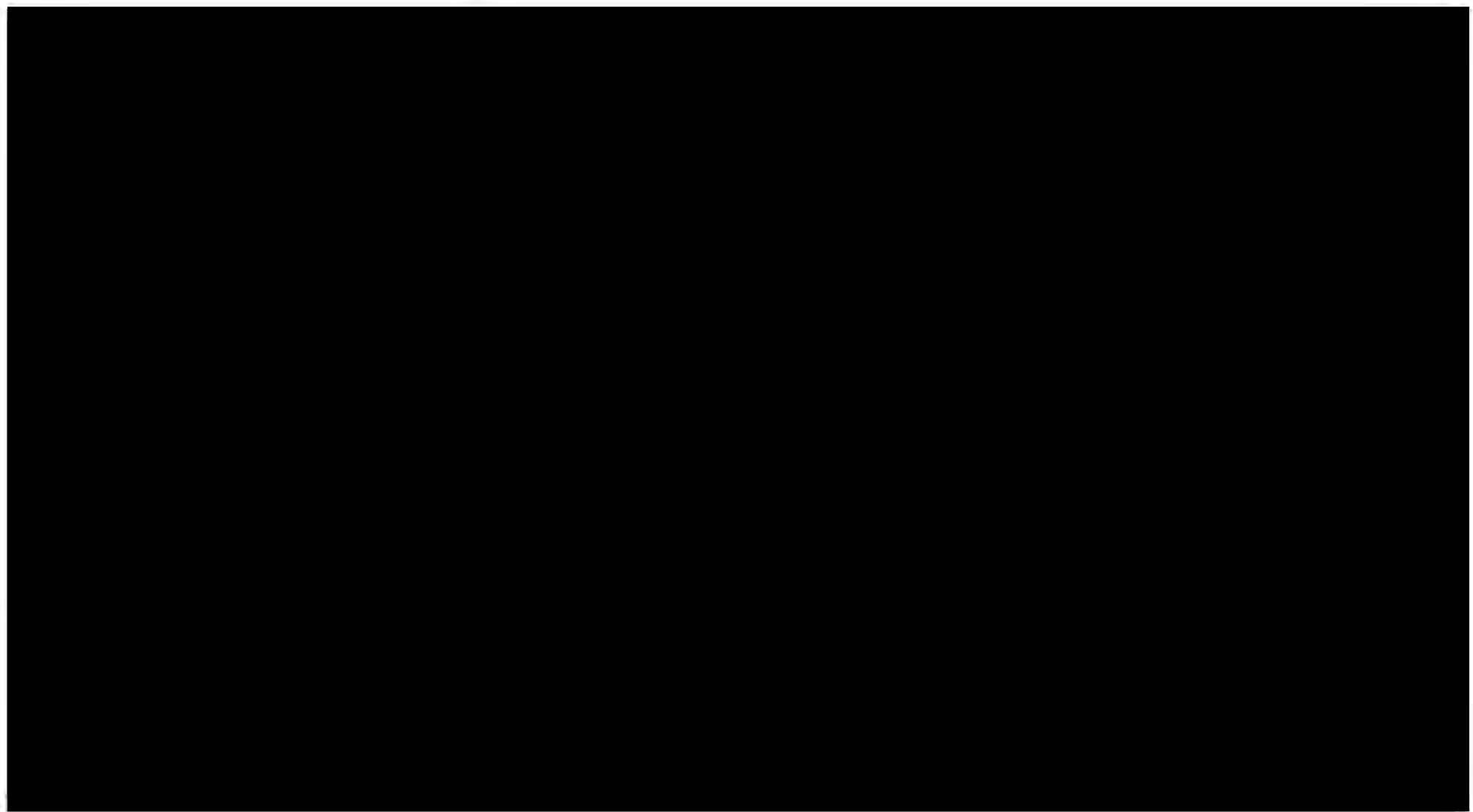


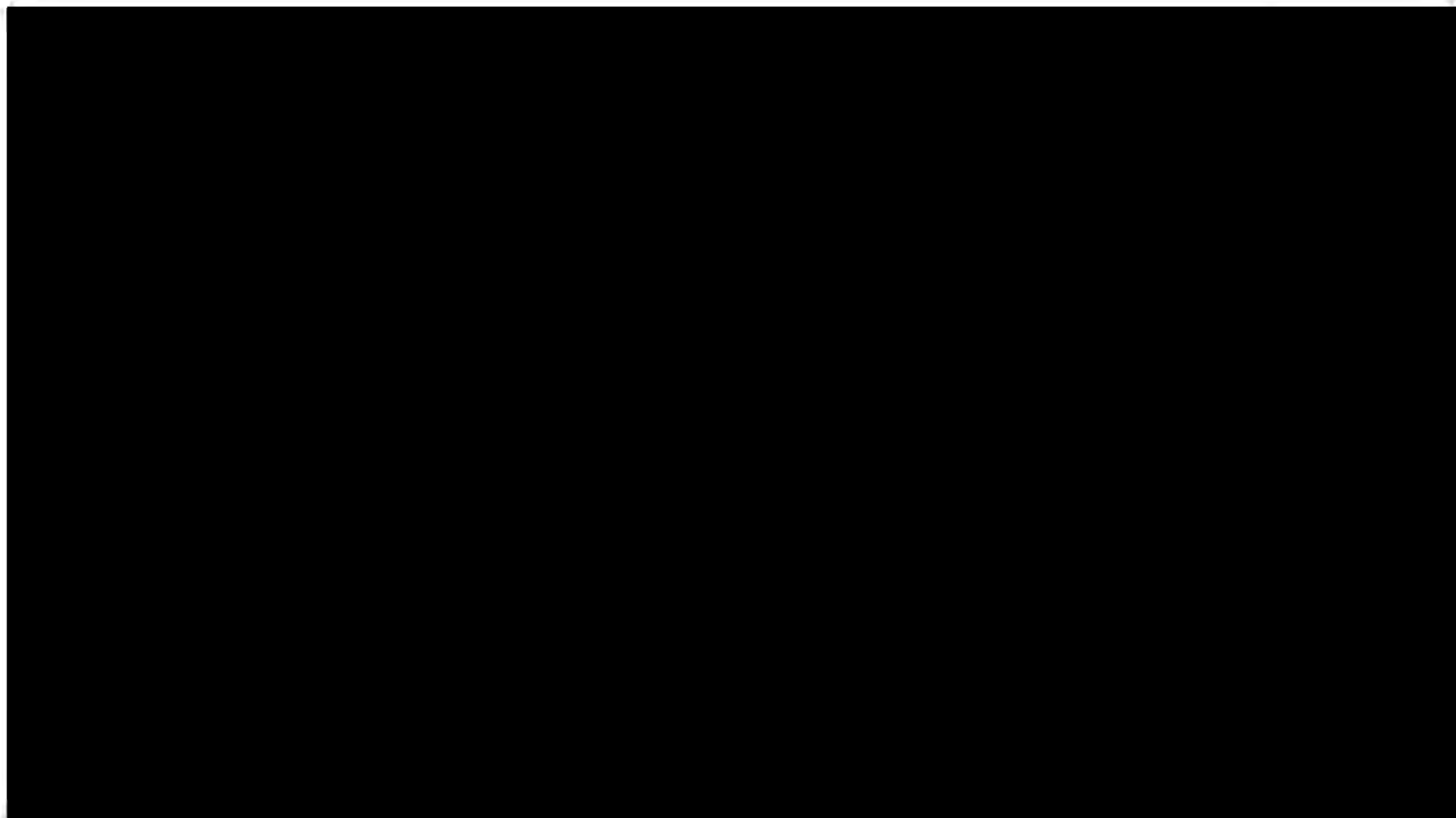




Supporting slides







EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

WORK STREAM 1: VIRUS MANUFACTURE AND SUPPLY

The Supplier shall ensure the Deliverables for Work Stream 1 are provided in accordance with the timelines described below:

Deliverables	Timelines
Source clinical isolates of the prevalent SARS-COV-2 virus with the [REDACTED] from UK COVID-19 with the appropriate patient consents for use by the Supplier and the Authority in the Project.	Completed
Characterise the [REDACTED] of SARS-COV-2 virus and review the patient medical history to ensure there are no issues precluding the use of the isolates in virus seed stock manufacture. Provide at least [REDACTED] or more isolates of SARS-COV-2 virus to be used in the virus seed stock manufacture.	Completed
Manufacture of the isolate SARS-COV-2 virus seed stock to standard appropriate for use in the Project, including: - sourcing of appropriate cell lines; - appropriate media and reagents; and - validation of appropriate equipment.	30 September 2020
Release testing of virus seed stock with a Certificate of Analysis (COA) and QP Release for the GMP Challenge Virus.	31 October 2020
Validation of BSL-3 GMP manufacturing facility for the Challenge Virus (currently at [REDACTED] [REDACTED] including obtaining appropriate certification, including from the MHRA and HSE.	31 October 2020
Source, license, test and release the chosen cell line for use in the GMP manufacture of the Challenge Virus.	30 November 2020
Manufacture and QP Release of [REDACTED] [REDACTED] (including Certificate of Analysis) for use in manufacturing of the Challenge Virus.	[REDACTED]
Manufacture of sufficient amounts of the Challenge Virus in accordance with GMP for: - all QP Release testing; - stability; - sample retention; - for use in the Human Virus Characterisation	31 December 2020

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Study (up to ■ subjects); - for any Human Challenge Study; - any seropositivity studies; and - any academic research use.	
QP Release of sufficient amounts of Challenge Virus in accordance with GMP (including Certificate of Analysis) for use in the Human Virus Characterisation Study.	31 December 2020
Provide sufficient amounts of the agreed dose strengths of the Challenge Virus based on the Protocol in pre-filled vials (for up to ■ subjects).	31 December 2020
Supply of the Challenge Virus to the Authority or its agents upon request at no additional cost	As requested by the Authority of its nominated agents.

WORK STREAM 2: HUMAN VIRUS CHARACTERISATION STUDY

The Supplier shall ensure the Deliverables for Work Stream 2 are provided in accordance with the timelines described below:

Deliverables	Timelines
In collaboration with the Sponsor, Royal Free and other third parties appointed by the Authority, ensure the Human Virus Characterisation Study is conducted in accordance with the Protocol, GCP, all applicable SOPs, regulations, laws and guidance.	Term of the Agreement
In collaboration with the Sponsor, Royal Free and other third parties appointed by the Authority, ensure the Facility is appropriately fitted-out, equipped and available for the Human Virus Characterisation Study.	31 December 2020
In collaboration with the Sponsor, ensure appropriate regulatory and ethical committee approvals for the Human Virus Characterisation Study, in accordance with the Protocol, GCP and applicable laws.	31 December 2020
Obtain appropriate clinical trial insurance for the Human Virus Characterisation Study.	Effective Date
Obtain appropriate consents and ensure that all potential subjects for the Human Virus Characterisation Study are appropriately screened and enrolled in accordance with the Protocol and GCP.	Term of the Agreement

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Ensure that all subject of the Human Virus Characterisation Study are provided appropriate medical care and supervision, including by appropriately qualified and experienced personnel for the duration of the Human Virus Characterisation Study.	Term of the Agreement
Ensure delivery of ancillary capabilities essential or appropriate for the Human Virus Characterisation Study Deliver, either itself or through carefully selected and appropriately qualified outsourced partners, including for services relating to: - pharmacovigilance; - data management; - biostatistics; - medical writing; and - clinical monitoring.	Term of the Agreement

OPTIONAL WORK STREAM 3: HUMAN VACCINE CHALLENGE STUDIES

The Supplier shall ensure the Deliverables for Work Stream 3 are provided in accordance with the timelines described below:

Deliverables	Timelines
The first [REDACTED] study slots for the Authority to assess the efficacy of potential vaccine candidates in Human Vaccine Challenge Studies; which may comprise up to [REDACTED] [REDACTED] Human Vaccine Challenge Studies.	To be confirmed
Such other Deliverables as are agreed between the Parties.	To be confirmed

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.4

RESPONSIBILITIES

RESPONSIBILITIES

Divisions of responsibilities and delegation of activities of the Supplier, the Authority and the Authority's nominated agents, including Imperial College and Royal Free Hospital shall be as specified in Schedule 1 of the Project Deed of Collaboration entered into by the Supplier, the Authority, Imperial College and Royal Free Hospital on or about the Effective Date.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.5

ENVIRONMENTAL REQUIREMENTS

ENVIRONMENTAL REQUIREMENTS

The Supplier shall comply with the environmental requirements set out in the Annex to this Schedule.

ANNEX 1: ENVIRONMENTAL REQUIREMENTS

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

“Permitted Item”	means those items which are permissible under this Agreement to the extent set out in Table B of this Annex
“Prohibited Items”	means those items which are not permissible under this Agreement as set out at Table A of this Annex
“Sustainability Reports”	written reports to be completed by the Supplier containing the information outlined in Table C of this Annex
“Waste Hierarchy”	<p>means prioritisation of waste management in the following order of preference:</p> <ul style="list-style-type: none">(a) Prevention – by using less material in design and manufacture. Keeping products for longer;(b) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;(c) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;(d) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and(e) Disposal - Landfill and incineration without energy recovery.

2 ENVIRONMENTAL REQUIREMENTS

- 2.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.
- 2.2 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.

- 2.3 In performing its obligations under the Agreement the Supplier shall to the reasonable satisfaction of the Authority:
- (a) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
 - (b) prioritise waste management in accordance with the Waste Hierarchy;
 - (c) be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - (d) ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
 - (e) inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
 - (f) minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
 - (g) reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 2.4 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
- 2.5 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 2.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- (a) it is a Permitted Item; or
 - (b) the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 2.7 The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Agreement and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex.
- 2.8 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

TABLE A – Prohibited Items

The following consumer single use plastics are Prohibited Items:	
Authority specific Prohibitions	
Project specific Prohibitions	

TABLE B – Permitted Items

Authority Permitted Items	
Project Specific Permitted Items	

TABLE C – Sustainability Reports

Report Name	Content of Report	Frequency of Report
Sustainability Impact	<ul style="list-style-type: none"> a. the key sustainability impacts identified; b. sustainability improvements made; c. actions underway or planned to reduce sustainability impacts; d. contributions made to the Authority's sustainability policies and objectives; e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and f. risks to the Service and Sub-contractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks. 	On the anniversary of the Effective Date
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill.	Before contract award and on the anniversary of the Effective Date.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

		waste
Greenhouse Gas Emissions	Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses	On the anniversary of the Effective Date
Water Use	Volume in metres cubed.	On the anniversary of the Effective Date
Energy Use	<p>Separate energy consumption figures for:</p> <ul style="list-style-type: none"> a. assets deployed on the Supplier's site; b. assets deployed on the Authority's site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. <p>Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.</p>	On the anniversary of the Effective Date
Transport Use	<ul style="list-style-type: none"> a. miles travelled by transport and fuel type, for goods delivered to the Authority's sites; b. miles travelled by staff when visiting the Authority's sites from the Supplier's sites or home; c. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees 	on the anniversary of the Effective Date
Materials	Materials usage, including:	

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

	<p>a. type of material used;</p> <p>b. quantity or volume of material used;</p> <p>and</p> <p>c. amount of recycled/recovered material used.</p>	
--	--	--

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.6

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
 - (b) appropriately regulated;
 - (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
 - (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

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

3 FAILURE TO INSURE

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

4 EVIDENCE OF INSURANCES

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

5 CANCELLATION

- 5.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

3 Insured

3.1 The Supplier

4 Interest

4.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 7) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

5 Limit of indemnity

5.1 Not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £10,000,000 in the aggregate per annum in respect of products liability.

6 Territorial limits

United Kingdom

7 Period of insurance

7.1 From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

8 Cover features and extensions

8.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

9 Principal exclusions

- 9.1 War and related perils.
- 9.2 Nuclear and radioactive risks.
- 9.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 9.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 9.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 9.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 9.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 9.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

10 Maximum deductible threshold

- 10.1 Not to exceed **£ 5,000 any one occurrence** for each and every third party property damage claim (personal injury claims to be paid in full).

PART C: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

PART D: ADDITIONAL INSURANCES

Professional Indemnity Insurance	Not applicable
Property Damage Insurance / Goods in Transit Insurance	Not applicable
Environmental Liability Insurance or Contractors Pollution Liability Insurance	Not applicable

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.7

SECURITY

Security

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings:

"Breach of Security"	means the occurrence of: <ul style="list-style-type: none">a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/orb) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement, in either case as more particularly set out in the Security Policy where the Authority has required compliance therewith in accordance with paragraph 2.2;
"Security Policy"	means the Authority's security policy as in force at the Effective Date and as updated from time to time; and
"Security Management Plan"	the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Authority and as updated from time to time.

2. Complying with security requirements and updates to them

- 2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by the Authority it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 2.2 Where the Security Policy applies the Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Change to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.

Any change to the Charges shall be subject to the Change Control Procedure.

- 2.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to the Change Control Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

3. Security Standards

- 3.1 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 3.2.1 is in accordance with the Law and this Agreement;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Authority Data; and
 - 3.2.4 where specified by the Authority in accordance with paragraph 2.2 complies with the Security Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. Security Management Plan

4.1 Introduction

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

- 4.2.1 The Security Management Plan shall:
- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Agreement relevant to security;
 - b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
 - c) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Deliverables, processes associated with the

provision of the Deliverables, the Authority Premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;

- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Authority Premises, the Sites, and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Agreement;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Agreement and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Effective Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Authority for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Authority in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Authority. If the Authority

does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Authority shall not unreasonably withhold or delay its decision to approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Authority to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

4.4 Amendment of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- a) emerging changes in Good Industry Practice;
- b) any change or proposed change to the Deliverables and/or associated processes;
- c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
- d) any new perceived or changed security threats; and
- e) any reasonable change in requirements requested by the Authority.

4.4.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- a) suggested improvements to the effectiveness of the Security Management Plan;
- b) updates to the risk assessments; and
- c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Authority or otherwise) shall be subject to the Change Control Procedure.

4.4.4 The Authority may, acting reasonably, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control

Procedure for the purposes of formalising and documenting the relevant change or amendment.

5. Security breach

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
 - 5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
 - a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - b) remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - c) prevent an equivalent breach in the future exploiting the same cause failure; and
 - d) as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Authority.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Authority.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

Authority Responsibilities

Authority Responsibilities are as described in Schedule 2 (*Services Description*).

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4

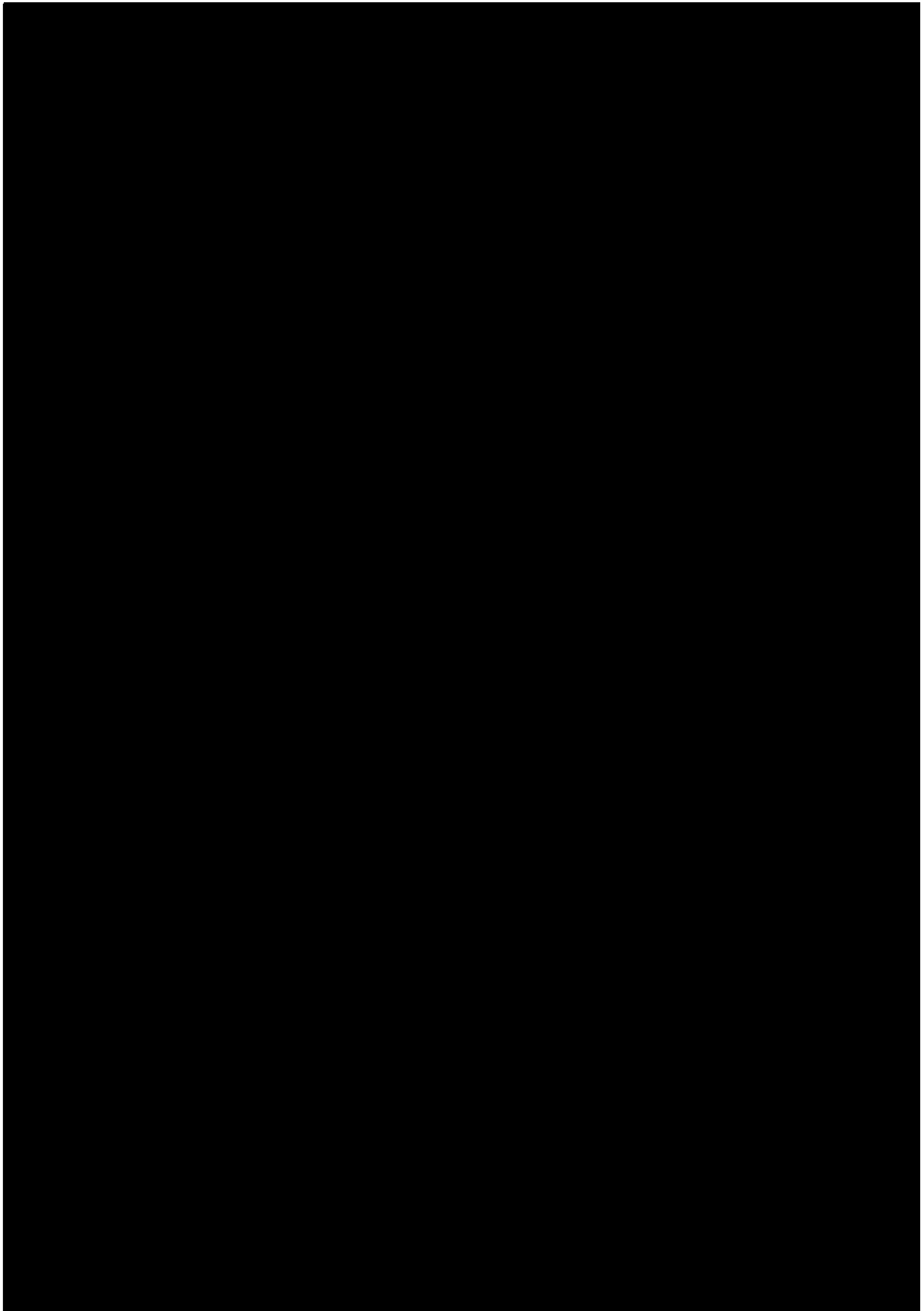
SUPPLIER MATTERS

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.1

COMMERCIALLY SENSITIVE INFORMATION



EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.2

KEY SUB-CONTRACTORS

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.3

THIRD PARTY CONTRACTS

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on **[date]** 20

BETWEEN:

- (1) **[insert name]** of **[insert address]** (the “**Sub-licensee**”); and
- (2) **[insert name]** of **[insert address]** (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) **[insert name of Authority]** (the “**Authority**”) and the Supplier are party to a contract dated **[insert date]** (the “**Contract**”) for the provision by the Supplier of **[insert brief description of services]** to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and

development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

- (c) other Information provided by the Authority pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and
- (d) Information derived from any of the above, but not including any Information that:
 - (a) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Authority;
 - (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (c) was independently developed without access to the Information;

“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); and

“Sub-licence”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;

- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub- licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the

provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
 - (a) if to be given to the Supplier shall be sent to:
[Address]
Attention: [Contact name and/or position, e.g. “The Finance Director”]
 - (b) if to be given to the Sub-licensee shall be sent to:
[Name of Organisation]
[Address]
Attention: []

6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of *[name of Supplier]*

Signature:

Date:

Name:

Position:

For and on behalf of *[name of Sub-licensee]*

Signature:

Date:

Name:

Position:

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 5

NOT USED

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6

NOT USED

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Certificate of Costs” a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;

“Costs” the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) Employer Pension Contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not

held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;

- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties; and
- (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“The Employer Pension Contributions”

means:

- (a) in respect of CSPA Eligible Employees those sums set out at Clauses 7.1.1 (*annual administration charges covering core services*), 7.1.5 (*employer contributions*), 7.1.7 (*the ASLC*) and 7.1.8 (*flat charges applicable to the Partnership Pension Account*) of the Admission Agreement;
- (b) in respect of NHSPA Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority);

- (c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions';

“European Standard” in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

“Incurred Costs” in relation to a Milestone, the sum of:

- (a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and
- (b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vi) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

“Supplier Profit” in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

“Supplier Profit Margin” in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

“Supporting sufficient information in writing to enable the

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Documentation”	Authority reasonably to assess whether the Charges and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Work Day”	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Work Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

Type text here

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Charges (including Milestone Payments) shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - (b) **“Guaranteed Maximum Price with Target Cost”**, in which case the provisions of Paragraph 3 shall apply;
 - (c) **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
 - (d) **“Firm Price”**, in which case the provisions of Paragraph 5 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS

- 2.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;
 - (iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment, not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
 - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or

- (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and
 - (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
 - (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.
- 2.2 The rates set out in Table 1 of Annex 1, the Capped ADR and any caps set out in Table 2 of Annex 1 shall not be subject to Indexation.
- 3 **GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS**
 - 3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Annex 1.
 - 3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Authority and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

Milestone Payment =
 - 3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the

guaranteed maximum price for that Milestone as set out in Table 4 of Annex 1 (the "**Guaranteed Maximum Price**") Represented numerically:

(a) if:
(i) [REDACTED] and
(ii) [REDACTED]
then Milestone Payment = [REDACTED] or

(b) if:
[REDACTED]
[REDACTED]
[REDACTED]

where:

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

- 3.4 The day costs set out in Table 3 of Annex 1, Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.
- 3.5 The Supplier shall not at any time sell the same Services and/or Goods to a different customer at prices below those stated in this Agreement. If the Supplier charges a different customer a lower price for these Services and/or Goods, the Supplier must immediately apply the lower price for the Services and/or Goods under this Agreement. If the Supplier fails to meet the lower price, the Authority, at its option, may terminate this Agreement without liability pursuant to this Agreement.

4 FIXED PRICE MILESTONE PAYMENTS

- 4.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.
- 4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall not be subject to increase by way of Indexation.

5 FIRM PRICE MILESTONE PAYMENTS

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- 5.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.
- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

PART B: CHARGING MECHANISMS



1 MILESTONE PAYMENTS

- 1.1 On the Achievement of a Milestone in accordance with Part C (*Milestone Approval Procedure*), the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- (a) a Milestone Achievement Certificate; and
 - (b) where requested by the Authority, a Certificate of Costs with Supporting Documentation.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.3 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
 - (b) no later than 60 Working Days after the invoice referred to in Paragraph 1.3(a) has been issued, the Supplier shall:
 - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (ii) issue to the Authority an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);
 - (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.3(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

2 OPTIONAL SERVICES

- 2.1 
- 2.2 To reserve availability of the Supplier to conduct the first  Human Vaccine Challenge Studies after the Viral Characterisation study, Authority will pay

upon signature of this agreement a non-refundable reservation fee of [REDACTED]

- 2.3 The [REDACTED] or as otherwise mutually agreed of the effective date, and the parties shall work together to ensure regular communication around these timelines.
- 2.4 If the Authority does not initiate each respective study within the agreed timeframes, the Supplier has the right to defer the reservation to the next available time slot.
- 2.5 The Authority (with the support of the Supplier) may transfer any of the [REDACTED] reservation slots to another third party under the same terms as above with the consent of the Supplier, such consent not to be unreasonably withheld.

PART C: ADJUSTMENTS TO THE CHARGES

1 CHANGES TO CHARGES

- 1.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report).
- 1.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.
- 1.3 Neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

Milestone Approval Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Milestone Achievement Criteria”	in relation to a Milestone, the success criteria for that Milestone as referred to in Paragraph 5;
“Authority Witness”	any person appointed by the Authority pursuant to Paragraph 7; and

2 RISK

2.1 The issue of a Milestone Achievement Certificate shall not:

- (a) operate to transfer any risk that the relevant Milestone is complete or will meet and/or satisfy the Authority's requirements for that Milestone; or
- (b) affect the Authority's right subsequently to reject any Milestone to which the Deliverable Achievement Certificate or Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Agreement.

3 APPROVAL OVERVIEW

3.1 The Supplier shall not submit a Milestone for approval:

- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Milestone Achievement Criteria;
- (b) until the Authority has issued a Milestone Achievement Certificate in respect of any prior, dependant Milestones; and
- (c) until the Parties have agreed the Milestone Achievement Plan relating to the relevant Milestone(s).

3.2 The Supplier shall submit each Milestone for approval by or before the relevant Milestone Date.

3.3 Any Disputes between the Authority and the Supplier regarding approval of a Milestone shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 NOT USED

5 MILESTONE ACHIEVEMENT CRITERIA

The Milestone Achievement Criteria for each Milestone is set out at Annex 1 of Schedule 7.1 (*Charges and Invoicing*).

6 Approval

- 6.1 The Supplier shall provide to the Authority in relation to each Milestone a report (an “**Achievement Report**”) on or before the Milestone Date.
- 6.2 Each Achievement Report shall provide a full report on the relevant Milestone, including:
- (a) an overview of the Milestone Achievement Criteria;
 - (b) the steps that the Supplier has taken to satisfy the relevant Milestone Achievement Criteria; and
 - (c) identification of the relevant Milestone Achievement Criteria that have not been satisfied together with the Supplier’s explanation of why those criteria have not been met.

7 WITNESSING

- 7.1 The Authority may, in its sole discretion, require the review of Milestones by one or more Authority Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of an Authority Witness.
- 7.2 The Supplier shall give the Authority Witnesses access to any documentation reasonably necessary and requested by the Authority Witnesses to perform their role as an Authority Witness in respect of the relevant Milestone(s).
- 7.3 The Authority Witnesses:
- (a) shall actively review any documentation relevant to the Milestone Achievement Criteria;
 - (b) shall be required to verify that the Supplier has achieved the Milestone in accordance with the Milestone Achievement Plan; and
 - (c) may produce and deliver their own, independent reports on Milestone Achievement Criteria, which may be used by the Authority to assess whether the Milestone(s) have been Achieved.

8 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 8.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- (a) the Supplier providing evidence that it has:
 - (i) met the Milestone Achievement Criteria; and
 - (ii) all Deliverables related to that Milestone have been Achieved; and
 - (b) the Authority has reviewed and approved the evidence provided by the Supplier under Paragraph 8.1(a).


EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- 8.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7 (*Charges and Invoicing*).
- 8.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out the reasons for the relevant Milestone not being Achieved.
- 8.4 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*) and the Authority shall refuse to issue a Milestone Achievement Certificate where the information required under Schedule 8.4 (*Reports and Records Provisions*) Annex 3 (*Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

PART D: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

- 1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
- (a) comply with the requirements of the Authority's e-invoicing system;
 - (b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of the same;

- (k) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - (l) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - (m) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - (n) where the Services have been structured into separate Service lines, the information at (a) to (m) of this paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system Oracle or if that is not possible to:
- 
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Authority's requirements set out in this Part D, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.9 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.

2 PAYMENT TERMS

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

TABLE 6.2: WORK STREAM 2 COST SCHEDULE (CHARACTERISATION STUDY)

Supplier and Authority acknowledge that the number of subjects required for the Characterisation Study will range between [REDACTED] subjects, with the final number of subjects ("Final Number of Subjects") being confirmed by the Authority by the 30% subject inoculated milestone. Following such confirmation and in the event that the Final Number of Subjects is not equal to [REDACTED] subjects (such that the Total Charges in Table 6.2.1 and Table 6.2.2 do not apply), the revised Total Charges for Work Stream 2 Cost Schedule for the Characterisation Study ("Revised Total Charges") will be calculated based on the following formula:

Revised Total Charges = [REDACTED]

Where:

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

The Milestone Payment for the [REDACTED] subject inoculated milestone shall include a true-up amount such that the total Charges paid to date is equal to [REDACTED] of the Revised Total Charges. The remaining [REDACTED] of Revised Total Charges would be paid over the remaining four milestone payments, each based on the equivalent percentages in Table 6.2.1 and 6.2.2.

Charges are based on the Request for Quotation Documents shared with the Authority on 4th September 2020. Both Parties acknowledge that, as of the Effective Date, a revised draft protocol is in place and that the Royal Free Hospital has been chosen as the facility for the Characterization Study. As a result, both parties acknowledge that the Charges need to be updated to reflect the Supplier's recommended changes to account for the above and any other relevant changes to the Characterization Study plan.

Changes to Charges of the Characterisation Study

In accordance with Clause 11 (*Change*), notwithstanding the provisions of Change Control Procedure as specified in this Schedule &.2, the following shall apply to changes to Charges of the Characterisation Study:

- Within 1 week of the Effective Date, there will be a reconciliation against the requirements and a contract amendment will be executed directly between the Authority and the Supplier to take account of the changes proposed by the Supplier and any other relevant changes to the Characterization Study plan.
- On finalisation of the protocol, there will be a further reconciliation against the requirements and a contract amendment will then also be agreed between the Parties.
- In light of the Supplier committing significant resources in anticipation of the start date for the Characterisation Study as outlined in the Project Plan, the Charges for the Characterisation Study will be adjusted in full to reflect any delay to the actual start date for

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

the Characterization Study up to a maximum of 6 weeks at which time the parties shall revisit the issue.

TABLE 6.2.1: Where there are subjects or less for the Characterisation Study, only the following Milestone Payments shall apply:

[illegible]

TABLE 6.2.2: Where there are [REDACTED] subjects for the Characterisation Study, only the following Milestone Payments shall apply:

[illegible]

TABLE 6.2.3: Facility consultation:

[illegible]

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Total Charges				
---------------	--	--	--	--

TABLE 6.2.4: Scientific support and programme design:

Milestone	Milestone Achievement Criteria	Milestone Payments		Expected Milestone Date
		%	Value	

TABLE 6.3: WORK STREAM 3 COST SCHEDULE (HUMAN CHALLENGE STUDIES - RESERVATION FEES)

Milestones				

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS**TABLE 1: MILESTONE PAYMENTS**

Description		Charge
Work Stream 1 (Virus Manufacture & Supply)	Firm	TABLE 6.1: WORK STREAM 1 COST SCHEDULE (VIRUS MANUFACTURE & SUPPLY)
Work Stream 2 (Characterisation Study)	Firm	TABLE 6.2: WORK STREAM 2 COST SCHEDULE (CHARACTERISATION STUDY)
Reservation Fee for Work Stream 3 (Human Challenge Studies)	Firm	TABLE 6.3: WORK STREAM 3 COST SCHEDULE (HUMAN CHALLENGE STUDIES - RESERVATION FEE)

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I [*name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority*] of [*insert name of Supplier*], certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the [*insert name/reference for the Agreement*] (the “**Agreement**”) in relation to the following [*Milestone/Milestone Group*]:

[*Insert details of Milestone/Milestone Group*]

- 1 has been reasonably and properly incurred in accordance with [*name of Supplier*]'s books, accounts, other documents and records;
- 2 is accurate and not misleading in all key respects; and
- 3 is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed [*Director of Finance or equivalent*]

[*Name of Supplier*]

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.2

PAYMENTS ON TERMINATION

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Supplier Personnel”** any Supplier Personnel who:
- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
 - (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
 - (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
 - (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

“Breakage Costs Payment”	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Contract Breakage Costs”	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none">(a) any statutory redundancy payment; and(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 31.1(a) (<i>Termination by the Authority</i>) to terminate

this Agreement for convenience on a specified Termination Date;

“Termination Estimate”

has the meaning given in Paragraph 10.2;

“Third Party Contract”

a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.3 (*Third Party Contracts*);

“Unrecovered Charges”

the Charges up to the Termination Date in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7 (*Charges and Invoicing*) as such Charges are forecast in the Financial Model;

“Unrecovered Payment”

an amount equal to the lower of:

the sum of the Unrecovered Charges; and

the amount specified in Paragraph 4.

2 TERMINATION PAYMENT

- 2.1 The Termination Payment payable pursuant to Clause 31.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

- 3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:
- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
 - (b) are unavoidable, proven, reasonable, and not capable of recovery;
 - (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
 - (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
 - (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

- 3.2 The Breakage Costs Payment shall not exceed 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of [REDACTED] per relevant member of the Supplier Personnel.

Contract Breakage Costs

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.
- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
 - (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7 (*Charges and Invoicing*) as forecast in the Financial Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Charges by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Charges payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6 FULL AND FINAL SETTLEMENT

6.1 Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

7 INVOICING FOR THE PAYMENTS ON TERMINATION

7.1 All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7 (*Charges and Invoicing*).

8 SET OFF

- 8.1 The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

9 NO DOUBLE RECOVERY

- 9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 9.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.
- 9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

10 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 10.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- 10.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.3

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Board” means the Supplier’s board of directors;

“FDE Group” means the Supplier and the Guarantor;

2 DUTY TO NOTIFY

2.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (c) an FDE Group entity committing a material breach of covenant to its lenders;
- (d) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (e) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.4

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	<ul style="list-style-type: none">(a) the Authority’s internal and external auditors;(b) the Authority’s statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) any party formally appointed by the Authority to carry out audit or similar review functions; and(f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	<p>a Change which:</p> <ul style="list-style-type: none">(a) materially changes the profile of the Charges; or(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:<ul style="list-style-type: none">(i) 5% or more; or(ii) £1m or more;
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none">(a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;(b) operating expenditure relating to the provision of the Services including an analysis showing:<ul style="list-style-type: none">(i) the unit costs and quantity of consumables and bought-in services;(ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower

grade; and

- (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin.
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

(a) **Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (iii) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7 (*Charges and Invoicing*));

(b) **Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

(c) **Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

- 3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
 - (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS**1 PROVISION OF THE FINANCIAL REPORTS**

1.1 Upon request by the Authority in writing, the Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - (b) the forecast Charges for the remainder of the Term,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2 FINANCIAL MODEL

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4 KEY SUB CONTRACTORS

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Certificate of Costs and/or the Open Book Data;
 - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

- (m) to review any records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers;
- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (q) to review the Supplier's quality management systems (including any quality manuals and procedures);
- (r) to review the Supplier's compliance with the Standards;
- (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (t) to review the integrity, confidentiality and security of the Authority Data.

1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the permitted scope of the audit;

- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
 - (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
- (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8

SCHEDULE 8.1

GOVERNANCE

Governance

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- | | |
|---------------------------|--|
| “Committee Member” | the representatives of the Supplier appointed to the Committees in accordance with paragraph 3; |
| “Committees” | the Study Delivery Team and the Human Challenge Steering Committee, as established by the Authority under the Project Collaboration Agreement; |
| “Project Managers” | the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2; |

2 MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 COMMITTEES

- 3.1 The Committees shall be established by the Authority and perform their functions in accordance with the Project Deed of Collaboration.
- 3.2 The Supplier shall appoint two (2) representatives to the Study Delivery Team, which shall include its Project Manager. The Supplier shall ensure at least one of its representatives attend each meeting of the Study Delivery Team.
- 3.3 The Supplier shall appoint two (2) representatives to the Human Challenge Steering Committee. The Supplier shall ensure at least one of its representatives attend each meeting of the Human Challenge Steering Committee
- 3.4 In the event the Supplier wishes to replace its appointed Committee Members, the Supplier shall notify the Authority in writing of the proposed change for agreement by the Authority (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Committee Member has at all times have a counterpart Supplier Committee Member of equivalent seniority and expertise.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

Change Control Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 7;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 4;
“Impact Assessment Estimate”	has the meaning given in Paragraph 3.3;
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 8. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 3;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 4 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 5;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 6;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 5.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 7.

2.4 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 5.2, any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.5 The Supplier shall:

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 CHANGE REQUEST

- 3.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 3.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 3.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

- 3.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) The nature of the request for clarification; and
- (b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

4 IMPACT ASSESSMENT

- 4.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description;
 - (ii) the Milestones, Project Plan and any other timetable previously agreed by the Parties;
 - (iii) other services provided by third party contractors to the Authority;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

- 4.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).
- 4.3 The Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 5 within 15 Working Days of receiving the Impact Assessment.

5 AUTHORITY'S RIGHT OF APPROVAL

- 5.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier the Authority shall evaluate the Change Request and the Impact Assessment and in consultation with the Study Delivery Team shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 5.2;
 - (b) reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law, or any change to the Charges due to any delay in the Project that is beyond Supplier's reasonable control subject to the conditions set forth in Schedule 7.1 regarding such circumstances. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. On receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
- 5.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 5.1 and it has not been rejected by the Supplier in accordance with Paragraph 6, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 5.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

6 SUPPLIER'S RIGHT OF APPROVAL

6.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and the Services Description does not state that the Supplier has the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 3.3.

7 FAST-TRACK CHANGES

7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

7.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £500,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 3, 4, 5 and 6 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

7.3 The Parties may agree in writing to revise the parameters set out in Paragraph 7.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

- 7.4 Minor Changes and resulting changes to the Charges may be discussed between the Parties via the Study Delivery Team. That Committee shall record such in writing the decision it reaches on whether or not the Minor Changes should be made and any resulting changes to the Charges. If the decision of the Committee is to recommend the relevant Minor Change be made, the Committee shall notify the Parties in writing and recommend they execute a formal written amendment to the relevant Service Agreement to reflect such change. If the Parties to the relevant Services Agreement agree with the recommendation of the Study Delivery Team they shall execute the formal written amendment.

Minor Changes mean any change to the Services that:-

- 7.4.1 does not result in a delay in the performance of the Services or more than 4 weeks; or
- 7.4.2 does not result in an increase in the Charges of more than £500,000; or
- 7.4.3 are changes such as but not limited to virus manufacturing / release delays, assay requirements, screening process, study design, study population and staffing levels (subject to the time and cost limitations set forth above).

8 OPERATIONAL CHANGE PROCEDURE

- 8.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Authority;
 - (b) require a change to this Agreement;
 - (c) have a direct impact on use of the Services; or
 - (d) involve the Authority in paying any additional Charges or other costs.
- 8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
- 8.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the time-scale for completion of the Operational Change.
- 8.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 8.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

9 COMMUNICATIONS

- 9.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	means the Human Challenge Steering Committee;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
 - (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's nominated representative and the Supplier's Chief Financial Officer.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

5 MEDIATION

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant

request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

- 7.1** Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court

proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - (e) the chair of the arbitral tribunal shall be British;
 - (f) the arbitration proceedings shall take place in London and in the English language;
 - (g) the seat of the arbitration shall be London; and

- (h) the Authority may join any other party in the arbitration.

8 URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
 - (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of

a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-contractor, by the Supplier.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

1 TRANSPARENCY REPORTS

- 1.1 The obligations to provide reports under this Schedule 8.4 shall only apply if requested by the Authority.
- 1.2 The Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “**Transparency Reports**”).
- 1.3 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.5 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.3 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.6 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

- 2.1 The Authority may require any or all of the following reports:
 - (a) delay reports;
 - (b) reports which the Supplier is required to supply as part of the Management Information;
 - (c) annual reports on the Insurances;
 - (d) security reports; and
 - (e) Force Majeure Event reports.

3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.

- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

<i>(Performance management)</i>			
---------------------------------	--	--	--

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

- 1 This Agreement, its Schedules and all amendments to such documents.
- 2 All other documents which this Agreement expressly requires to be prepared.
- 3 Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
- 4 Notices, reports and other documentation submitted by any Expert.
- 5 All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
- 6 Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
- 7 All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
- 8 All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
- 9 Documents prepared by the Supplier in support of claims for the Charges.
- 10 Documents submitted by the Supplier pursuant to the Change Control Procedure.
- 11 Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
- 12 Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 13 Invoices and records related to VAT sought to be recovered by the Supplier.
- 14 Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
- 15 Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
- 16 All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
- 17 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Authority	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
CI 12.3	Key Personnel	Sch Schedule 9.2	Effective Date	On replacement of Key Personnel	Authority
CI 13.11	Balanced Scorecard Report	As appropriate and agreed by the Authority	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Authority
Sch 2.6, Para 4	Evidence of Insurances	Sch 2.6	Effective Date	Within fifteen (15) days after policy renewal or replacement	Authority
CI 20	Commercially Sensitive Information	Sch 4	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
CI 13.7	Notified Key Subcontractors	Sch 4.2	Effective Date	On replacement of key subcontractor	Authority
CI 13.5	Third Party Contracts	Sch 4.3	Effective Date	On appointment of subcontract	Authority
CI 13.6	Notified Key Sub-Contractors	Sch 4.2	Effective Date	With each approved appointment or variation	Authority
CI 5	Detailed Project Plan	Schedule 2.3	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Authority
Sch 7, Part D Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 7.4, Part B, para 1.2	Contract Amendment Report	Sch 7.4, Part B, para 1.2	Within 1 month of a material change being agreed	-	Authority
Sch 7.4, para 1.1	Quarterly Contract Report	Sch 7.4, Part B, para 1.2	Within 1 month of the end of each Quarter	-	Authority
Sch 7.4, Part	Annual Contract Report	Sch 7.4, Part B,	Within 1 month of the end of the Contract	-	Authority

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
B, para 1.2		para 1.2	Year to which that report relates		
Sch 7.4 Part B, para 1.2	Financial Reconciliation Report	Sch 7.4, Part B, para 1.2	Within 6 months after the end of the Term	-	Authority
Sch 8.2 Para 3.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-	Authority
Sch 8.2 Para 4	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	-	Authority
Sch 8.2, Para 2.5	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority
Sch 8.2, Para 3	Change Request	Sch 8.2, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-	Authority

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Authority
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1	Authority
Sch 8.5, Para 2.1(a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the	Authority

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				Authority following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement	
Sch 8.5, Para 6.5(b)	Authority Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 8.5, Annex 4, Para 17.1, Para 17.3 & Para 17.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	-
Sch 8.6 Service	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Authority

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Continuity					
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part B Para 11.2	Sch 8.6, Para 11.8	Authority

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.5

EXIT MANAGEMENT

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Agreement which is a: <ul style="list-style-type: none">(c) termination of the whole or part of this Agreement in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(d) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or(e) wrongful termination or repudiation of this Agreement by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 5;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the

	Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	<p>any termination of the whole or any part of this Agreement which occurs:</p> <p>(a) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</p> <p>(b) as a result of the expiry of the Initial Term or any Extension Period;</p>
“Register”	the register of Sub-contracts referred to in Paragraphs 2.1(a);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Authority;
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 7.2(b).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Sub-contracts and other relevant agreements required for the performance of the Services;
- (b) agree the format of the Register with the Authority as part of the process of agreeing the Exit Plan; and
- (c) at all times keep the Register up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Register are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Register, updated by the Supplier up to the date of delivery of such Register;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (f) such other material and information as the Authority shall reasonably require,
- (together, the **"Exit Information"**).
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential

transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5 EXIT PLAN

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;

- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
 - (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - (e) the management structure to be employed during the Termination Assistance Period;
 - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (g) how the Services will transfer to the Replacement Supplier and/or the Authority;
 - (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 4 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- and
- (l) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.

- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.
- 6.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority; and
- (d) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

Termination Obligations

- 6.4 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.5 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its

compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (ii) any items that have been on-charged to the Authority, such as consumables;
- (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.5(f)(ii).

- 6.6 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

- 6.7 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS AND SUB-CONTRACTS

- 7.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges; or
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets.

- 7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(d), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - (i) which, if any, of:
 - (A) the Exclusive Assets that are not Transferable Assets; and
 - (B) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
 - (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
 - (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

- 7.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 14 (*Intellectual Property Rights*) and/or Clause 15 (*Transfer and Licences Granted by the Supplier*).

8 SUPPLIER PERSONNEL

- 8.1 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.2 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.4 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
- (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 4: SCOPE OF THE TERMINATION SERVICES

- 17.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - (c) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - (d) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - (e) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - (f) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - (g) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - (h) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
 - (i) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
 - (j) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
 - (k) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth

transfer of the Services to the Authority and/or the Replacement Supplier:

- (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (l) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

17.2 The Supplier shall:

- (a) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 17.1(g) providing skills and expertise of a suitable standard; and
- (b) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 17.1(h), providing skills and expertise of a reasonably acceptable standard.

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

17.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 17.1(j) shall include:

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and

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

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 17.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 5: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) **[INSERT NAME OF AUTHORITY]** (the "**Authority**") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

18 DEFINITIONS AND INTERPRETATION

18.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"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;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Authority and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“ITT Response” means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

“Other Affiliate” any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Authority and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital (B) to this Agreement;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 18.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 18.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 18.4 Reference to persons includes legal and natural persons.
- 18.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 18.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 18.7 Reference to any gender includes any other.
- 18.8 Reference to writing includes email.
- 18.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 18.10 The words “include” and “including” are to be construed without limitation.

18.11 The singular includes the plural and vice versa.

18.12 The headings contained in this Agreement shall not affect its construction or interpretation.

19 ETHICAL WALLS

19.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are 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 interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 19.2.

19.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team dispute resolution in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

19.3 In addition to the obligations set out in Clause 19.1(a) and 19.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in Clause 19.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

19.4 Any breach of Clause 19.1, Clause 19.2 or Clause 19.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of

the Authority there has been a breach of Clause 19.1, Clause 19.2 or Clause 19.3.

- 19.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 19.1 and 19.2 as reasonably requested by the Authority.
- 19.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 19.1(c) and 19.2.
- 19.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 19.5 and 19.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 19.8 The actions of the Authority pursuant to Clause 19.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 19.9 In no event shall the Authority be liable for any bid costs incurred by:
 - (a) the Counterparty or any Affiliate or Representative; or
 - (b) any Other Bidder, Other Affiliate or Other Representative,as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 19.10 The Counterparty acknowledges and agrees that:
 - (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 19; and
 - (b) in the event of such breach by the Counterparty of any of its obligations in clause 19 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

20 SOLE RESPONSIBILITY

- 20.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

21 WAIVER AND INVALIDITY

- 21.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right,

power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

- 21.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

22 ASSIGNMENT AND NOVATION

- 22.1 Subject to clause 22.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement 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, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 22.
- 22.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 23.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

24 TRANSPARENCY

- 24.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

25 NOTICES

- 25.1 Any notices sent under this Agreement must be in writing.

- 25.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

- 25.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact		
Address		
Email		

- 25.4 This Clause 25 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

26 WAIVER AND CUMULATIVE REMEDIES

- 26.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 26.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

27 TERM

- 27.1 Each party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date.

28 GOVERNING LAW AND JURISDICTION

- 28.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 28.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART A: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Department”	<p>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:</p> <p>(a) Government Department; or</p> <p>(b) Non-Ministerial Department.</p>
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of the characterisation study or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2(a)(iv).
“Related Service Provider”	any person who provides services to the Authority in relation to this Agreement from time to time, which persons include as at the Effective Date of

contract signature;

“Review Report” has the meaning given in Paragraphs 7.2(a) to 7.2(c);

“Service Continuity Plan” means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**);
 - (iii) Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

- (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

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

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the

Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

- 6.2 The Insolvency Continuity Plan shall include the following:
- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - (c) plans to manage and mitigate identified risks;
 - (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
 - (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
 - (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
 - (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
 - (c) within 14 days of a Financial Distress Event;
 - (d) within 30 days of a Corporate Change Event; and
 - (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except

that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of

the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.

- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

PART B: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

- 10.1 This Agreement is a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

- 11.1 Paragraphs 11 to 13 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part B:
 - (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B:
 - (a) is full, comprehensive, accurate and up to date;
 - (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Informationand is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
 - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
 - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works

provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

- (e) complies with the requirements set out at Annex 1 (Group Structure Information and Resolution Commentary) and Annex 2 (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.

11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:

- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part B if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has

elapsed since the Accounting Reference Date on which the CRP Information was based); and

11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 3.1 of Schedule 7.3 (*Financial Distress*)
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (a) Aa3 or better from Moody's;

(b) AA- or better from Standard and Poors;

(c) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

12 Termination Rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part B and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

13 Confidentiality and usage of CRP Information

13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part B and Clause 21.

13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to

enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
 - (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (i) summarising the information;
 - (ii) grouping the information;
 - (iii) anonymising the information; and
 - (iv) presenting the information in general terms
- 13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 1: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY

- 1 The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 and the dependencies between each.

ANNEX 2: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION

- 1 The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1(a) of this Annex 2 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - (c) involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.7

CONDUCT OF CLAIMS

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the

notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

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

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9

EMPLOYMENT

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9.1

NOT USED

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9.2

KEY PERSONNEL

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 10

GUARANTEE

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the "**Deed**")

BETWEEN:

- (1) **[INSERT NAME OF THE GUARANTOR]** [a company incorporated in [England and Wales] under registered number [insert registered number] whose registered office is at [insert registered office]] **[OR]** [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the "**Guarantor**")]; and
- (2) **[INSERT NAME OF THE AUTHORITY]**, [acting on behalf of the Crown] of [insert the Authority's address] (the "**Authority**").

together the "**Parties**" and each a "**Party**".

BACKGROUND:

- (A) The Authority [has awarded] a contract dated [insert date] to [insert details of the Supplier] (the "**Supplier**") for the provision of [insert details of goods or services to be provided] (the "**Guaranteed Agreement**").
- (B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
- (C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The **following** definitions apply in this Deed:

- | | |
|-----------------------|---|
| "Business Day" | means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; |
| "Control" | means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: <ol style="list-style-type: none">(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or(b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or |

any other body corporate;

"Guaranteed Agreement" has the meaning given to it in Recital (A);

"Guaranteed Obligations" has the meaning given to it in Clause 2.1(a);

"Supplier" has the meaning given to it in Recital (A);

"VAT" means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the "Guarantor", the "Authority", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) "assets" includes present and future properties, revenues and rights of every description;
- (c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- (a) guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the **"Guaranteed Obligations"**);

- (b) shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
 - (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.
- 2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:
 - (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
 - (c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 AUTHORITY PROTECTIONS

Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
 - (a) any arrangement made between the Supplier and the Authority;
 - (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
 - (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;

- (d) any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
- (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
- (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
- (a) be subrogated to any right or security of the Authority;
 - (b) claim or prove in competition with the Authority against the Supplier or any other person;
 - (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
 - (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
 - (e) claim any right of contribution, set-off or indemnity from the Supplier,
- without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).
- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

- 4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:
- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
 - (b) the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.
- 5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
 - (b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

- 6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or

payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Guarantor represents and warrants to the Authority that:

- (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- (d) it has been duly authorised to enter into this Deed;
- (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the

Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.

- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority. For the avoidance of doubt, Change of Control as defined in Section 35.1 to the Agreement, shall not be considered assignment of this Deed

9 VARIATION

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:

- (a) For the Attention of [insert details]
- (b) [Address of the Guarantor in England and Wales]

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

- 10.3 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

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

- 10.5 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

11 ENTIRE AGREEMENT

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

12 WAIVER

- 12.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

- 13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.]

Executed as a deed by [insert the name of the Guarantor] acting by [insert name of Director] a director, in the presence of a witness:

.....
[Signature of Witness]

.....
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
- 1.2 [REDACTED]
- 1.3 [REDACTED]
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 21.2 to 21.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> None <p>The Supplier is Controller and the Authority is Processor</p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause 21.2 to 21.15 of the following Personal Data:</p> <ul style="list-style-type: none"> None <p>The Parties are Joint Controllers</p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> None <p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p>

EXECUTION VERSION – HVIVO SERVICES AGREEMENT SCHEDULES

	<ul style="list-style-type: none"> • Business contact details of Party's personnel, • Business contact details of any directors, officers, employees, agents, consultants and contractors of each Party engaged in the performance of their duties under this Agreement.
Duration of the processing	Term of the Agreement and for the duration of any Services that are intended to continue after expiry or termination of this Agreement.
Nature and purposes of the processing	Each Party will process (including collecting, sharing, storing and using) Personal Data as set out above in order to meet its obligations under this Agreement and in order to comply with any legal or regulatory obligations.
Type of Personal Data	Name, address, telephone number, images of directors, officers, employees, agents, consultants and contractors of each Party engaged in the performance of their duties under this Agreement.
Categories of Data Subject	Directors, officers, employees, agents, consultants and contractors of each Party engaged in the performance of their duties under this Agreement.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	Each in accordance with each Party's relevant policies and in accordance with applicable laws

ANNEX 1:

NOT USED