**SECTION 2**

**GENERAL TERMS AND CONDITIONS**

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**1.0 Definitions and Interpretation**

1.1 In this Contract, the following words will have the following meanings:

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| “NIFAIS | Means the Norther Ireland Animal Information System which facilitates the management of the tests in relation to Schedule 11:Tuberculosis Testing Procedural Instructions.  |
| “AVS” | Means Approved Veterinary Surgeons |
| “Approval” | Means the written consent of the Authority. |
| “Authority” | Means the Department of Agriculture, Environment and Rural Affairs, Jubilee House, 111**Ballykelly Road. Ballykelly. Limavady.** BT49 9HP. |
| “Award Letter” | Means the letter of award issued by the Authority to the Contractor informing the Contractor of their acceptance of the agreement contained in these conditions of contract. |
| “Business Continuity and Disaster Recovery Plan” | Means the business continuity and disaster recovery plan to be produced by the Contractor in response to the requirements detailed within the Specification. |
| “Confidential Information” | Means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:i. was public knowledge at the time of disclosure (otherwise than by breach of clause 34 Confidential Information);ii. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; oriv. is independently developed without access to the Confidential Information. |
| “Contract” | Means this written agreement between the Authority and the Contractor, which is more particularly described in clause 1.2 of the Form of Contract. |
| “Contract Manager” | Means the person for the time being appointed by the Authority as being authorised to administer the Contract on behalf of the Authority or such person as may be nominated by the Contract Manager to act on their behalf. |
| “Contracting Authority” | Means any public sector body.  |
| “Contractor” | Means the person, firm, partnership or company that enters into this contract with the Authority. |
| “Contract Period” | Means the period from the Service Commencement Date to:i. the end of the Initial Contract Period; orii. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract. |
| “Contract Price” | Means the contract price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Schedule 2: Pricing Profile, for the full and proper performance by the Contractor of its obligations under the Contract. |
| “Default” | Means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other. |
| “DOTAS” | Means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under 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 s. 132A Social Security Administration Act 1992. |
| “DPA” | Means the Data Protection Act 1998. |
| “Environmental Information Regulations” | Means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| “Equipment” | Means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract. |
| “Exit Plan” | Means the Exit Plan as set out in Schedule 6 which is the principles of the exit and service transfer arrangements that are intended to achieve orderly transition of the Services from the Contractor to the Authority and/or a Replacement Contractor in the event of termination (including partial termination) or the expiry of this Contract. |
| “FOIA” | Means the Freedom of Information Act 2000. |
| “Force Majeure” | Means any event or occurrence which prevents a Party from performing its obligations under the Contract and which is not attributable to any act or failure to take preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster; pestilence; explosion; malicious damage; nuclear, biological or chemical warfare; or any other disaster, natural or man-made. |
| “Fraud” | Means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Authority. |
| “General Anti-Abuse Rule” | Means* the legislation in Part 5 of the Finance Act 2013; and
* any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

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| “General Change in Law” | Means a change in Law which comes into effect after the Service Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services. |
| “Good Industry Practice” | Means standards, practices, methods and procedures confirming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances. |
| “Halifax Abuse Principle” | Means the principle explained in the CJE Case C-255/02 Halifax and others. |
| “Information” | Means all data and information which are embodied in any medium including all electronic, optical, magnetic or tangible media.  |
| “Initial Contract Period” | Has the meaning set out in paragraph 1.3 of Section 1. |
| “Intellectual Property Rights” | Means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. |
| “Keeper” or “Herd-keeper” | Means the person responsible for animals or livestock which are tested as part of the Services. |
| “Keeper Data” | Means any Personal Data or any other data (including commercially sensitive data) held by the Contractor in relation to the Keeper. |
| “Key Performance Indicators” or “KPI’s” | Means the indicators set out in Schedule 4: Performance Management Framework.  |
| “Key Personnel” | Means that person(s) named by the Contractor in Schedule 13: Contractors Key Personnel. |
| “Law” | Means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any statutory provision as defined by the Interpretation Act (Northern Ireland) 1954, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply. |
| “Month” | Means calendar month. |
| “MRCVS” | Means Member or Fellow of the Royal College of Veterinary Surgeons. |
| “NIFAIS” | Northern Ireland Food Animal Information System |
| “Occasion of Tax Non-Compliance” | Means* Any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
1. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
2. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
* any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.
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| “Party/Parties” | Means the Contractor and/or the Authority (as appropriate).. |
| “Property” | Means the property, other than real property, issued or made available to the Contractor by the Authority in connection with this Contract. |
| “Premises” | Means any premises where the Services are provided. |
| “Pricing Profile” | Means the Schedule 2 containing details of the pricing profile. |
| “QA” | Means Quality Assurance. |
| “Quality Standards” | Means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 1: Specification. |
| “RCVS” | Means the Royal College of Veterinary Surgeons. |
| “Regulatory Bodies” | Means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly. |
| “Relevant Tax Authority” | Means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established. |
| “Replacement Contractor” | Means a Contractor nominated by a Keeper(s) to supply any services or which the Authority uses in substitution for delivery of any of the Services following the expiry, termination or partial termination of this Contract. |
| “Request for Information” | Will have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” will apply).  |
| “Schedule” | Means a schedule attached to, and forming part of, this Contract. |
| “Service Levels” | Means the Service Levels set out in Schedule 4: Performance Management Framework. |
| “Service Commencement Date” | Means 11th April 2024. |
| “Services” or “Contract Services” | Means the Services to be provided by the Contractor to the Authority under this Contract as specified in Schedule 1: Specification. |
| “Specific Change in Law” | Means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services. |
| “Specification” | Means the description of Services to be supplied under the Contract as set out in Schedule 1: Specification.  |
| “Staff” | Means all persons employed by the Contractor to perform its obligations under this Contract.  |
| “Step-In Trigger Event” | 1. Any default by the Contractor giving rise to the right to terminate under clause 21
2. A Default by the Contractor that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
3. A Force Majeure Event that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
4. The Authority considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under this Agreement;
5. The existence of serious risk to health or safety of persons, to animal health, property or environment in connection with the Services; and /or the need by the Authority to take action to discharge a statutory duty.
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| “Suspect Animal” | Means animals, where there is suspicion of disease.  |
| “Sustainable Development Strategy for Northern Ireland” | Means the NI Executive’s Sustainable Development Strategy [NI Executive Sustainable Development Strategy - 'Everyone's Involved' | Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)](https://www.daera-ni.gov.uk/publications/ni-executive-sustainable-development-strategy-everyones-involved) |
| “TB Orders” | Means legislative instructions - Tuberculosis (Examination and Testing) Scheme Order (Northern Ireland) 1999 as amended and the Tuberculosis Control Order (Northern Ireland) 1999 as amended. |
| “TUPE” | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. Contractors shall comply with their obligations under these regulations. |
| “Variation to Contract Form” | Means the form attached at Annex A and referred to in clause 23.2. |
| “VAT” | Means value added tax in accordance with the provisions of the Value Added Tax Act 1994. |
| “Veterinary Inspectors” | Means those appointed under the Diseases of Animals (Northern Ireland) Order 1981 as amended. |
| “Working Day” | Means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland. |

1.2 Where a capitalised word is not defined in this Contract it will have the meaning given to it in the Contract Documents.

1.3 In this Contract unless the context otherwise requires:

1.3.1 References to numbered clauses are references to the relevant clause in this Contract and reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.3.2 Any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.3.3 The headings to the clauses of this Contract are for information only and do not affect the interpretation of this Contract;

1.3.4 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.3.5 Where the word ‘including’ is used in this Contract, it will be understood as meaning ‘including without limitation’;

1.3.6 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.3.7 Words importing the masculine include the feminine and the neuter; and

1.3.8 Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

## 1.4 Authority’s Obligations

1.4.1 Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Authority to the Contractor.

**2.0 Basis of Contract**

2.1 Issue of the Award Letter and a copy of the Contract signed by both parties sent by electronic mail by the Authority will constitute an acceptance of the agreement contained in these conditions of contract.

2.2 Any Authority variation to the provisions of this Contract (including any special conditions of contract agreed between the Parties) will be inapplicable unless evidenced as provided for in clause 24.

**3.0 Initial Contract Period**

3.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Initial Contract Period, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

**4.0** **[Extension](#GotoF8)**

4.1 The Authority shall have the option(s) to extend this Contract by up to 6 months from the end of the Initial Contract Period. If the Authority intends to exercise such option(s) it must give notice to the Contractor, no later than one month prior to the date on which this Contract would otherwise expire. The period of extension is hereinafter referred to as the “Extended Period”. If the Contractor doesn’t wish to extend their contract, they are required to notify the Authority within 1 month of the end of the initial contract period,

**5.0 Supply of Services**

5.1 In consideration of the amounts due under this Contract, the Contractor will, from the date set out in the Award Letter; provide the Services to the Authority for the Contract Period, in accordance with this Contract.

52 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain registration with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

5.3 If any Services provided to the Authority were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Services will be held on trust for the Authority.

5.4 In providing the Services, the Contractor will:

454.1 co-operate with the Authority in all matters relating to the Services, and comply with all the Authority’s instructions;

5.4.2 use Staff who are suitably qualified, skilled and experienced to perform tasks assigned to them, and within sufficient numbers to ensure that the Contractor’s obligations are fulfilled in accordance with this Contract;

5.4.3 ensure that the Services will conform with all descriptions and requirements set out in the Specification;

5.4.4 comply with all applicable Law; and

5.4.5 provide all Equipment, tools and vehicles and such other items as are required to provide the Services.

5.5 All Equipment brought onto the Premises shall be at the Contractor’s own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority’s Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

5.6 The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.

5.7 The Contractor shall, at the Authority’s written request, at its own expense and as soon as reasonably practicable:

i. remove from the Premises, any Equipment which in the reasonable opinion of the Authority, is either hazardous, noxious or not in accordance with the Contract; and

ii. replace any such item with a suitable substitute item of Equipment.

5.8 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

5.9 The Authority may inspect and examine the manner in which the Contractor supplies the Services, at the Premises, during normal business hours, on reasonable notice.

5.10    Without prejudice to any other rights and remedies the Authority may have pursuant to the Contract, the Contractor shall indemnify the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Contractor’s delay in the performance of the Contract.

5.11    Without prejudice to any other right of remedy of the Authority, if the Authority informs the Contractor that they consider that any part of the Services do not meet the Specification or the requirements of the Contract or differ in any way (other than in a minor inconsequential way) from that Specification or those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and re-perform the Services correctly within such reasonable time as may be specified by the Authority in order to rectify the situation.

5.12 The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for his staff and for any compensation payments due to them howsoever arising.

4513 If in the opinion of the Authority any Staff have behaved inappropriately or are incapable of efficiently performing their duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person without delay on being required to do so and cause the work to be performed by such other person as may be necessary, in default of which the Authority may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.

5.14 Time of delivery of the Services shall be of the essence and if the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

**6.0 Representations and Warranties**

6.1 The Contractor warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Contract, and that this Contract is executed by a duly authorised representative of the Contractor.

6.2 The Contractor warrants and represents that:

i. in entering this Contract it has not committed any Fraud;

ii. as at the Commencement Date, all information contained in the Contract remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;

iii. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

iv. 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 the Contract;

v. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor’s assets or revenue;

vi. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

vii. prior to the Commencement Date:

1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
3. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

**7.0 Business Continuity and Disaster Recovery Plan**

7.1 The Contractor must produce a business continuity and disaster recovery plan where detailed within the Specification.

7.2 Where required by the Authority, the Contractor shall develop, regularly review and update, test and comply with appropriate disaster recovery and business continuity plans to ensure the continuity of the Services. The Contractor shall ensure that it is able to implement such plans at any time in accordance with their terms.

**8.0 Contract Price**

8.1 In consideration of the Contractor’s performance of its obligations under this Contract, the Authority will pay the Contract Price in accordance with this clause, and clause 8.2.

8.2 The Contract Price for the Services will be as stated in Schedule 2: Pricing Profile.

8.3 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.

8.4 The Contract Price shall apply for the Initial Contract Period.

8.5 The Contract Price can only be varied or adjusted by the Authority.

8.6 If the Parties are unable to agree an Authority variation in the Contract Price the Contract shall terminate as set out in clause 21.

8.7 If an Authority variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of the agreed variation date.

**9.0 Payment**

9.1 The Authority will pay the Contractor the Contract Price for the Services after the receipt of valid test results and no later than 30 days after receiving the signed BT15 Cover Sheet document which includes a valid Test Identification Number.

9.2 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

9.3 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 9.3 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

9.4 The Contractor shall make any payments due to the Authority (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

895 The Contractor hereby accepts the terms of the Self-Billing Agreement at Schedule 10.

**10.0 Mistakes in Information**

10.1 The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

**11.0 Conflicts of Interest**

11.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

11.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

**12.0 Recovery of Sums Due**

12.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which at any later time may become due, to the Contractor under this Contract. In addition, any Service Credits that are to be deducted due to KPI failures in the contract which ran between October 2023 and April 2024, will be deducted from payments made under this contract The Contractor will not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

12.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

12.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

12.4 All payments due shall be made within 30 days unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**13.0 Property**

13.1 Any Property will remain property of the Authority, will only be used for the purpose of carrying out this Contract, and will be returned promptly to the Authority on expiry or termination of this Contract.

13.2 The Contractor will reimburse the Authority for any loss or damage to Property (other than deterioration resulting from normal and proper use) caused by any Staff.

13.3 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all other appropriate persons and shall, at the Authority’s request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

13.4 Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

13.5 The Contractor shall maintain Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with this Contract and for no other purpose without prior Approval.

13.6 The Contractor shall ensure the security of all Property whilst in its possession, either on their Premises or elsewhere during the supply of the Services, in accordance with the Authority’s reasonable security requirements as required from time to time.

13.7 The Contractor shall be liable for all loss of, or damage to Property (excluding fair wear and tear) unless such loss or damage was caused by the Authority’s Default. The Contractor shall inform the Authority within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

13.8 The Contractor shall use Property solely in connection with the performance of the Contract.

13.9 The Contractor shall notify the Contract Manager of any surplus Property belonging to the Authority remaining at the end of the Contract Period and shall dispose of it as the Authority may direct. Without prejudice to any other rights of the Authority, the Contractor shall deliver to the Authority any of the Authority’s equipment or property (whether processed or not) on demand by the Authority.

**14.0 Key Personnel**

14.1 Any Key Personnel will not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

14.2 Any replacements to the Key Personnel will be dealt with by way of a Change Control Note as detailed in Schedule 3. Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

14.3 In the event that the Contractor is unable to provide replacement staff, acceptable to the Authority’s representative, within reasonable time, then the Authority reserves the right to obtain replacement staff from other sources and pass any additional cost on to the Contractor. The Authority reserves the right to terminate this Contract where the failure to provide a replacement has a detrimental effect to the timely provision of the Services in accordance with clause 22 (Termination of Contract).

14.4 The Authority shall not unreasonably withhold its Approval/agreement under clauses 14.2 or 14.3. Such Approval/agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

**15.0 TUPE**

15.1 Both Parties shall comply with their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (TUPE) if any.

15.2 Contractor’s Responsibilities

15.2.1 Not later than twelve months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Contractor’s staff including the following:

1. the total number of Staff assigned to providing the services;
2. the salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in clause 16.2.1(i);
3. the conditions of contract of employment/engagement of the Staff referred to in clause 16.2.1(i) and their job titles;
4. details of any current disciplinary or grievance proceedings ongoing or likely to arise and details of any claims current or threatened; and
5. details of all collective agreements with a brief summary of the current state of negotiations with trade unions and of any current industrial disputes and claims for recognition by any trade union.

If the Contractor becomes aware that the information it provided pursuant to clause 16.2.1 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.

15.2.2 At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to clause 16.2.1.

15.2.3 At the time of providing the information disclosed pursuant to clauses 16.2.1 and 16.2.2, the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.

15.2.4 The Authority may use the information it receives from the Contractor pursuant to clause 16.2.1 and 16.2.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contact Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

15.2.5 The Contractor shall indemnify and keep indemnified the Authority and any Replacement Contractor against any liabilities which the Authority or any Replacement Contractor may suffer or incur as a result of or in connection with:

i. the provision of information pursuant to clause 16.2.2 and 16.2.3; and

ii. any claim or demand by any of the Staff or a trade union arising directly or indirectly from any act, fault or omission of the Contractor on or before the end of the Contract Period.

15.2.6 The Contractor undertakes to the Authority that, during the twelve months prior to the end of the Contract Period the Contractor shall not without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed):

i. amend or vary (or promise to amend or vary) the conditions of contract of employment or engagement of any Staff (other that where such amendment or variation has previously been agreed between the Contactor and the Staff in the normal course of business;

ii. terminate or give notice to terminate the employment or engagement of any Staff (other than for reasons of misconduct, qualification or capability);

iii. remove or vary the involvement of any of the Staff from or in the provision of the Services other than in the normal course of business.

15.3 Authority’s Responsibilities – only to be used when outsourcing for the first time

15.3.1 The Authority shall indemnify and keep indemnified the Contractor against any liabilities which the Contractor may suffer or incur as a result of or in connection with any claim or demand by any of the Authority’s staff or their trade union arising directly or indirectly from any act, fault or omission of the Authority on or before the Commencement Date.

**16.0 Insurance**

16.1 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date take out with a reputable insurance company and maintain for the Contract Period the following policy or policies of insurance:

1. public liability insurance with a limit of indemnity of not less than

£5 million per occurrence or series of occurrences arising from a single event;

1. employer’s liability insurance with a limit of indemnity of not less than £5 million per occurrence or series of occurrences arising from a single event;
2. The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that Staff involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor involved in the supply of the Services has a limit of indemnity of not less than two hundred and fifty thousand pounds £250,000 for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

16.2 The Contractor will effect and maintain with a reputable insurance company, a policy or policies of insurance providing an adequate level and duration of cover in respect of all risks which may be incurred by the Contractor in respect of its performance of the Contract including death, personal injury, loss or damage to property or any other loss.

16.3 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

16.4 The cover referred to above shall be held for the duration of the Contract Period and for an additional six (6) years.

16.5 The Contractor will give to the Authority, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**17.0 Indemnity**

17.1 Neither Party excludes or limits liability to the other Party for:

1. Death or personal injury caused by its negligence; or
2. Fraud; or
3. Fraudulent misrepresentation; or
4. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

17.2 Subject to clause 17.3, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

17.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

17.4 Subject always to clause 17.1, the liability of either Party for Defaults shall be subject to the following financial limits:

i. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Contract shall in no event exceed one million pounds (£1,000,000); and

ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clause 17.4(i) shall in no event exceed the greater of one hundred and fifty per cent (150%) of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises.

17.5 Subject always to clause 17.1, in no event shall either Party be liable to the other for any:

i. loss of profits, business, revenue or goodwill; and/or

ii. indirect or consequential loss or damage.

17.6 The provisions of clause 17.5 will not limit the Authority’s right to recover for;

i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;

ii. wasted expenditure or charges rendered unnecessary and incurred by the Authority arising from a Default by the Contractor;

iii. additional cost of procuring replacement services for the remainder of the term of the Contract;

iv. additional costs to maintain the Services arising from a Default by the Contractor; and

v. anticipated savings.

**18.0 Intellectual Property Rights**

18.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (“the IP Materials”):

1. furnished to or made available to the Contractor by or on behalf of the Authority shall remain vested in the Authority and its licensors; and
2. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Authority and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 19.1(ii) to the Authority.

18.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP materials prepared in accordance with clause 18.1(ii). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

18.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

18.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, successor organisations, the replacement Contractor or to any other third party supplying services to the Authority.

18.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Contracting Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Contracting Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

i. items or materials based upon designs supplied by the Authority; or

ii. the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of this Contract.

18.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

18.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

i. shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

ii. shall take due and proper account of the interests of the Authority; and

iii. shall not settle or compromise any claim without the Authority’s prior written consent (not to be unreasonably withheld or delayed).

18.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor’s obligations under this Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 18.5(i) or (ii).

18.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under this Contract.

18.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

i. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

ii. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

 and in the event that the Contractor is unable to comply with clauses 18.10(i) or (ii) within 20 Working Days of receipt of the Contractor’s notification the Authority may terminate this Contract with immediate effect by notice in writing.

18.11 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

**19.0 Not Used**

**20.0 Assignment**

20.1 The Contractor will not without the written consent of the Authority assign, novate or in any way dispose of the benefit and/or the burden of this Contract or any part thereof. The Authority may, in the granting of such consent, provide for additional conditions of contract relating to such assignment, novation or disposal. The Contractor will be responsible for the acts and omissions as though those acts and omissions were its own.

20.2 The Authority may assign, novate, or otherwise dispose of its rights and obligations under this Contract without the consent of the Contractor provided that such assignment, novation or disposal will not increase the burden of the Contractor’s obligations under this Contract.

20.3 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.

20.4 If the rights and obligations under this Contract are assigned, novated or otherwise disposed of to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “Transferee”):

i. the rights of termination of the Authority in clause 21.1.3 (Termination of Contract) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

ii. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor.

20.5 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under this Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

20.6 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract.

**21.0 Termination of Contract**

21.1 Without prejudice to any other right or remedy it might have, the Authority may terminate this Contract by written notice to the Contractor with immediate effect if:

21.1.1 the Contractor is in material breach of any obligation which is not capable of remedy; or

21.1.2 the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied; or

21.1.3 the Contractor becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor’s assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 22.1.3) in consequence of debt in any jurisdiction.

21.2 Where the Authority terminates the Contract and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated, no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

21.3 The Authority shall have the right to terminate the Contract in all or part at any time by giving 3 Months’ written notice to the Contractor.

21.4 Where the Authority terminates this Contract under clause 21.3, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 21.3

21.5 The Authority shall not be liable under clause 21.4 to pay any sum which:

i. was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

ii. when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the expiry of the Contract Period; or

iii. is a claim by the Contractor for loss of profit, due to early termination of the Contract.

21.6 Save as otherwise expressly provided in the Contract:

i. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

ii. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clause 5.0 (Representations and Warranties), 8.0 (Payment), 11.0 (Recovery of Sums Due), 18.0 (Intellectual Property Rights), 32.0 (Bribery Act 2010), 31.0 (Data Protection Act), 34.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 35.0 (Freedom of Information), 39.0 (Audit), 46.0 (Remedies Cumulative), 50.0 (Governing Law and Jurisdiction), and 54.0 (Termination on Insolvency and Change Control).

**22.0 Consequences of Termination/Expiry**

22.1 Upon termination or expiry of this Contract, the Contractor will:

22.1.1 give all reasonable assistance to the incoming provider of the Services;

22.1.2 return all requested documents, information and data to the Authority as soon as reasonably practicable;

22.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress;

22.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

22.2 If the Contractor fails to comply with clause 22.1.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors where any such items may be held.

22.3 Where the end of the Contract Period arises due to the Contractor’s Default, the Contractor shall provide all assistance under clauses 22.1.2 and 22.1.4 free of charge. Otherwise, the Authority shall pay the Contractor’s reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

22.4 The Contractor shall invoke the Exit Plan (if applicable) within a reasonable time frame having regard to expiry of the Contract Period, any notice of termination of the Contract, or immediately in the case of immediate termination.

## 23.0 Variation

23.1 The Authority may request a variation to the Specification and/or conditions of contract. Such a change is hereinafter called a “Variation”.

23.2 The Authority may request a Variation by notifying the Contractor in writing of the “Variation” by means of a Variation to Contract Form (Annex A) and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

23.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may;

i. allow the Contractor to fulfil its obligations under this Contract without the variation to the Specification;

ii. terminate this Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 49.0.

**24.0 Change of Law**

24.1 The Contractor shall neither be relieved of its obligations to provide the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Contract Price as the result of:

 i. a General Change of Law; or

ii. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

24.2 If a specific Change in Law occurs during the Contract Period (other than those referred to in clause 24.1), the Contractor shall notify the Authority of the likely effects of that change, including:

1. whether any modification is required to the Services, the Contract Price or the Contract; and

ii. whether any relief from compliance with the Contractor’s obligations is required, including any obligation to achieve any milestones or to meet any Service Levels at any time.

24.3 Any increase or decrease in the Contract Price or relief from the Contractor’s obligations agreed by the Parties pursuant to this clause shall be implemented by way of a fair and reasonable adjustment to be agreed between the Parties.

24.4 As soon as practicable after any notification in accordance with clause 24.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:-

1. providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs;
2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
3. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
4. demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

**25.0 Prevention of Fraud**

25.1 The Contractor will take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, partners and directors) in connection with the receipt of monies from the Authority.

25.2 The Contractor will notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Authority (including the Authority) the Authority may:

i. terminate this Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or

ii. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

**26.0 The Contracts (Rights of Third Parties) Act 1999**

26.1 A person who is not a Party to the Contract will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

**27.0 Health and Safety**

27.1 The Contractor will promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority will promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

27.2 While on the Premises, the Contractor will comply with all health and safety measures.

27.3 The Contractor will notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

27.4 The Contractor shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

27.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Authority on request.

27.6 The Contractor shall notify the Authority immediately where it becomes aware of any breach of the health and safety legislation, codes of practice or guidance referenced at clause 27.4 by the Contractor or any of its staff. The Contractor shall provide promptly any information and data to the Authority as may be requested from time to time by the Authority relating to health and safety in respect of the provision of the Service.

**28.0 Discrimination**

28.1 The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the Services required of the Contractor under this Contract he has due regard to the need to promote equality of treatment and opportunity between:

i. persons of different religious beliefs or political opinions;

ii. men and women or married and unmarried persons;

iii. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)

iv. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

v. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);

vi. persons of different ages; and

vii. persons of differing sexual orientation.

28.2 The Contractor will take all reasonable steps to secure the observance of clause 29.1 by all Staff.

**29.0 Environmental Requirements**

29.1 The Contractor will provide the Services in accordance with the Authority’s environmental policy and in accordance with the Sustainable Development Strategy for Northern Ireland.

**30.0 Protection of Information Assurance**

30.1 When handling Information belonging to or supplied by the Authority, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Authority, and by adopting the appropriate elements of the Cabinet Office Security Policy Framework and supporting documents and any successors thereof as agreed with the Authority and set out in the Specification.

30.2 The Authority reserves the right to inspect the physical location of the Information store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Authority any information assurance processes and procedures in place.

**31.0 Data Protection Act (DPA)**

Sharing of data is lawful under the following legislation: Data Protection Legislation All parties comply with their obligations under the Data Protection Act 2018 and all relevant legislation. The data collated, processed, and shared is necessary for a governmental function. The processing of this data is in accordance with the Data Protection Act Schedule 2 conditions 5(c) and 6(1).

* The processing of this data is in accordance with the following:-

General Data Protection Regulation principles and DAERA’s Privacy Notice – The production & safety of food and Animal Health & Welfare

All parties to the agreement must adhere to the Data Protection Policies and GDPR.

All information must be handled in accordance with the Government guidelines, the GDPR and the Data Protection Act 2018 for handling and processing personal information.

An up-to-date list of those with access to the data should be maintained and tightly controlled.

All staff must be fully aware of, and abide by, their duties and responsibilities and comply with the eight principles of the Data Protection Act 2018.

All parties to the agreement must adhere to the Data Protection Policies and GDPR.

All information must be handled in accordance with the Government guidelines, the GDPR and the Data Protection Act 2018 for handling and processing personal information.

An up-to-date list of those with access to the data should be maintained and tightly controlled.

All staff must be fully aware of, and abide by, their duties and responsibilities and comply with the eight principles of the Data Protection Act 2018.

**The data will not be used for any other purpose without the full permission of DAERA.**

**Data retrieved from APHIS / NIFAIS must be processed for the purpose of this agreement only**. This information should not be released to a Third Party without the consent and knowledge of DAERA. Any misuse of this information will result in a breach of the agreement.

**Security incidents or data breaches**

* • DAERA must be informed immediately in the event of a data breach or data loss involving any information.
* • All such incidents should be reported to:

Information Asset Owner

Garry Corscadden

 Jubilee House,

111 Ballykelly Road,

Ballykelly,

Limavady, BT49 9HP

Tel 028 302 53244

Email: garry.corscadden@daera-ni.gov.uk

And

Information & Communication Branch Manager

Sharon Conway

Jubilee House,

111 Ballykelly Road,

Ballykelly,

Limavady, BT49 9HP

Tel 028 7744 2216

Email sharon.conway@daera-ni.gov.uk

31.1 The Contractor and its Staff will comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

31.2 For the purposes of this clause 31, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.

31.3 Notwithstanding the general obligation in clause 31.1, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Authority the Contractor shall:

i. Process the Personnel Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;

ii. comply with all applicable laws;

iii. Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;

iv. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

v. take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;

vi. not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Authority;

vii. ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 31.0.

viii ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority

ix. not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority.

31.4 The Contractor shall notify the Authority within five Working Days if it receives:

a request from a Data Subject to have access to that person’s Personal Data; or

a complaint or request relating to the Authority’s obligations under the DPA;

31.5 The provision of this clause 31.0 shall apply during the Contract Period and indefinitely after its expiry.

**32.0 Bribery Act 2010**

32.1 Both Parties shall:

1. have and shall maintain in place throughout the Contract Period their own policies and procedures to ensure compliance with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will ensure that all such policies and procedures are enforced;
2. comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and with their own anti-bribery and anti-corruption policies (including any relevant industry code on anti-bribery and anti-corruption), in each case as may be updated from time to time; and
3. not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or which would constitute such an offence if the offending activity, practice or conduct had been carried out in the UK).

The Parties agree that any breach of this clause 32.1 shall constitute a material breach which is incapable of remedy under clause 21.1.1 of this Agreement.

**33.0 Confidentiality**

33.1 Subject to clauses 34 and 35 each Party will keep confidential and not disclose, and will procure that his staff keep confidential and do not disclose, any information of a confidential nature obtained by him (concerning the other Party) by reason of this Contract except information which:

i. is in the public domain otherwise than by reason of a breach of this provision;

ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

iii. was in a Party’s possession without restriction as to its disclosure prior to receiving such Information from the other Party;

iv. is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;

v. is necessary for a Party to disclose for the purposes of the performing its obligations under this Contract (but only to the extent it is necessary to do so);

vi. the other Party has given its specific express prior written consent can be disclosed;

vii. in the case of the Authority, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.

33.2 The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.

33.3 The Authority is authorised by the Contractor to disclose confidential and secret information to persons(s) as may be notified to the Contractor from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain the market price for the Goods supplied hereunder, such exercise being commonly referred to as “benchmarking”. The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the information confidential and does not make use of the information except for the purpose for which the disclosure is made.

33.4 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff is aware of and shall comply with these obligations as to confidentiality.

33.5 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.

33.6 At the written request of the Authority, the Contractor shall procure that those members of the Staff identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

33.7 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:

i. to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;

ii. to any Contractor or other person engaged by the Authority or any person conducting a Cabinet Office Major Project Authority gateway review;

iii. for the purpose of the examination and certification of the Authority's accounts;

iv. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

v. for the purposes of assisting in the prevention and detection of fraud pursuant to powers inserted in the Audit and Accountability (Northern Ireland) Order 2003 by the Serious Crime Act 2007.

**34.0 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

34.1 The Contractor will comply with, and will ensure that its Staff complies with, the provisions of:

i. the Official Secrets Acts 1911 to 1989; and

ii. Section 182 of the Finance Act 1989.

34.2 In the event that the Contractor or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

**35.0 Freedom of Information (FOIA)**

35.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and will provide all necessary assistance to the Authority to enable it to comply with all Information disclosure obligations.

35.2 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

35.3 In no event shall the Contactor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

35.4 The Contractor acknowledges that (notwithstanding the provisions of clause 36.0) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“theCode”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

* + 1. without consulting the Contractor; or
		2. following consultation with the Contractor and having taken their views into account;

provided always that where clause 35.4(i) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

35.5 The Contractor will ensure that all Information relevant to this Contract is retained for disclosure and if requested, permit the Authority to inspect such records as requested from time to time.

**36.0 Publicity, Media and Official Enquiries**

36.1 Without prejudice to the Authority’s obligations under the FOIA, the Contractor will not make any press announcement or publicise this Contract or any part thereof in any way, except with the prior written consent of the Authority.

36.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, professional advisors and consultants comply with clause 37.1.

**37.0 Not Used**

**38.0 Staff**

38.1 Staff will comply with any rules, regulations and requirements specified by the Authority.

38.2 The Contractor and Staff shall observe and comply with such rules, regulations and the Authority’s policies applicable to the conduct of personnel, including those relating to health and safety (including in relation to compliance with any risk assessments), anti-bribery and corruption, and use of information technology, as may be in force from time to time as determined by the Authority. The Contractor acknowledges that it is the Contractor's responsibility to make its Staff aware of such policies and of the requirement to comply with them.

38.3 The Contractor shall manage Staff effectively and responsibly at all times in accordance with relevant Law, which shall include to avoid doubt, the Code of Practice on Workforce Matters in Public Sector Service Contracts – Northern Ireland.

**39.0 Audit**

39.1 The Contractor will keep and maintain until 6 years (or for a period as detailed within the specification) after the end of the Contract, full and accurate records of the Contract including the services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor will on request afford the Authority or the Authority’s representatives such access to those records as may be reasonably requested by the Authority in connection with the Contract.

39.2 The Authorityreserves the right tocarry out Audits and shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

39.3 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

1. all information requested by the Authority within the permitted scope of the audit;
2. reasonable access to any Premises controlled by the Contractor and to any Equipment and Property used (whether exclusively or non-exclusively) in the provision of the Services;
3. access to Staff.

39.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable service levels at a level of detail sufficient to verify compliance with the service levels.

39.5 The Authority shall endeavour to give 5 working days notice of its intention to conduct an audit but on the spot audits of the Contractor supplies of Service will be without prior notification.

39.6 The Contractor will provide the Authority with copies of all reports following any audits carried out by third parties relative to the matters specified in clause 39.3, within 20 Working Days of any such report being delivered to the Contractor.

39.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Contractor Default by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred during the audit.

39.8 If an audit identifies that:

i. a Contractor Default has occurred, the Authority shall serve a notice under clause 49.1 on the Contractor (a “Notice”). If the Contractor’s Default relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Contractor’s costs, then the Notice shall include a requirement for the provision of all such information;

ii. the Authority has overpaid any Charges, the Contractor shall pay to the Authority the amount overpaid within 20 Working Days of receipt of a Notice. The Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and

iii. the Authority has underpaid any Charges, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor in relation to invoicing within 20 Working Days of receipt of a Notice.

39.9The provisions of this clause 39.0 shall survive the expiry or termination of this Agreement for a period of 24 months, except to the extent of the provision to audit financial records which shall survive the expiry of this Agreement in line with the Authority’s retention policy. The Contractor shall on request afford the Authority or the Authority’s representatives such access to those records as may be required by the Authority in connection with this Contract.

**40.0 Force Majeure**

40.1 Neither Party will have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from Force Majeure. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than one Month, either Party may terminate this Contract by written notice to the other Party.

40.2 Any failure or delay by the Contractor in performing its obligations under this Contract which results from any failure or delay by an agent, staff or Contractor shall be regarded as due to Force Majeure only if that agent, staff or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

40.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 40.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

**41.0 Entire contract**

41.1 This Contract contains the whole contract between the Parties and supersedes and replaces any prior written or oral contracts, representations, or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

**42.0 Waiver**

42.1 Any waiver or relaxation either partly, or wholly of any of the conditions of the Contract will be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Contract.

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

42.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract. The remedies available to either Party do not exclude rights provided by law.

**43.0 Agency, partnership etc**

43.1 This Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.

**44.0 Not Used**

**45.0 Monitoring of Contract Performance**

45.1 The Contractor will comply with the monitoring arrangements set out in the Specification, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

**46.0 Remedies cumulative**

46.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract (whether under this Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

**47.0 Severance**

47.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and will not in any way affect any other circumstances of, or the validity or enforcement of this Contract.

**48.0 Dispute Resolution**

48.1 The Parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of, or in connection with the Contract. If the dispute cannot be resolved by the Parties within a reasonable period, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator (“the Mediator”). If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act, either Party will be able to apply to an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the Parties will meet with the Mediator to agree a procedure for negotiations.

48.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings. The Parties agree to be bound by any written agreement once signed by both Parties. If the Parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either Party may exercise any remedy that it has under this Contract.

48.3 The performance of the Contract shall not be suspended, cease, or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, or Contractor) shall comply fully with the requirements of the Contract at all times.

**49.0 Notices**

49.1 Any notice or other communication which is to be given by either Party to the other shall be sent by electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 4 hours after the letter was issued by electronic mail, or sooner where the other Party acknowledges receipt of such letters.

49.2 All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

**50.0 Governing Law and Jurisdiction**

50.1 The validity, construction and performance of this Contract, and all contractual and non-contractual matters arising out of it, will be governed by Northern Ireland law and will be subject to the exclusive jurisdiction of the Northern Ireland courts to which the Parties submit.

## 51.0 Prevention of Corruption

51.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other Contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such Contract.

51.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with this Contract.

51.3 If the Contractor, its Staff or anyone acting on the Contractor’s behalf, engages in conduct prohibited by clauses 51.1 or 51.2, the Authority may:

i. terminate this Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

ii. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

## 52.0 Tax Non-Compliance

52.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

52.2 If, at any point during the Contract Period, an Occasions of Tax Non-Compliance occurs, the Contractor shall:

1. notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
2. promptly provide to the Authority:
* details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
* such other information in relation to the Occasions of Tax Non-Compliance as the Authority may reasonably require.

## 53.0 Remedies in the Event of Inadequate Performance

53.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor’s obligations under this Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 21.0 of this Contract.

53.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 21.0, do any of the following:

i. without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with this Contract;

ii. without terminating the whole of this Contract, terminate thisContract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

1. make such pro rata deduction from the Contract Price to be made to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services in accordance with the provisions of the Contract; and/or

iv. terminate, in accordance with clause 21.0, the whole of this Contract.

53.3 Without prejudice to its right under clause 11.0, the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

53.4 If the Contractor fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

53.5 In the event that:

i. the Contractor fails to comply with clause 53.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

ii. the Contractor persistently fails to comply with clause 53.4 above,

the Authority may terminate this Contract with immediate effect by notice in writing.

53.6 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall indemnify the Authority for all costs associated with the reconstitution of that data and shall provide to the Authority a full credit in respect of any charge levied for its transmission.

53.7 Without prejudice and in addition to the terms of Clause 53.2, Remedies in the Event of Inadequate Performance, the Authority shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other services purchased, as a result of a breach of Clause 53.2. Such administration fees shall be in addition to any charge levied under Clause 53.2.

## 54.0 Termination on Insolvency and Change of Control

54.1 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). The Authority may terminate this Contract by notice in writing with immediate effect within six months of:

i. being notified that a change of control has occurred; or

ii. where no notification has been made, the date that the Authority becomes aware of the change of control,

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

1. **Termination on Occasion of Tax Non-Compliance**

55.1 In the event that;

i. the warranty given by the Contractor pursuant to clause 53.1 is materially untrue; or

ii. the Contractor commits a material breach of its obligations to notify the Authority of any Occasions of Tax Non-Compliance as requested by clause 53.2; or

iii. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable;

 the Authority shall be entitled to terminate this Contract by giving notice of termination to the Contractor.

**56.0 Disruption**

56.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.

56.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

56.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.

56.4 If the Contractor’s proposals referred to in clause 57.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Contract may be terminated with immediate effect by the Authority by notice in writing.

56.5 If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

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# Authority Step-In

57.1 On the occurrence of a Step-In Trigger Event, the Authority may serve

notice on the Contractor (a **“Step-In Notice”**) that it will be taking action under this Clause 57.0 (Authority Step-in), at the Authority’s discretion, either:

1. Itself; or
2. with the assistance of other Contractors

provided that the Contractor may require any such parties to comply with a confidentiality undertaking equivalent to clause 33 (Confidentiality) to step-in to the whole or any part of the Contract until such time as a Replacement Contractor is in place or for such other or lesser period as may be specified in the notice.

57.2 The Step-In Notice shall set out the following:

* the action the Authority wishes to take and in particular which part or parts of the Services that it wishes to control (the **“Required Action”**);
* the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Contractor's Default;
* where applicable the date on which it wishes to commence the Required Action;
* the time period which it believes will be necessary for the Required Action;
* whether the Authority will require access to the Contractor's premises and/or the Premises; and
* to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Contractor’s obligations to provide the Services during the period that the Required Action is being taken.

57.3 Following service of a Step-In Notice:

1. the Authority shall take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action; keep records of the Required Action taken and provide information about the Required Action to the Contractor;
2. the Authority shall co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide the Services in relation to which the Authority is not assuming control; and
3. the Authority shall act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this Clause 57.0.
4. the Contractor shall co-operate with the Authority

57.4 For so long as and to the extent that the Required Action is continuing,

then:

(a) the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and

(b) no Service Levels shall be applicable in respect of Services that are the subject of the Required Action;

57.5 Before ceasing to exercise its step in rights under this Clause 57.0, the

 Authority shall deliver a written notice to the Contractor (a “Step-Out Notice”), specifying:

 (a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the **“Step-Out Date”**) subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with Clause 57.6.

57.6 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **“Step-Out Plan”**) relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

57.7 If the Authority does not approve the draft Step-Out Plan, the Authority

 shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority’s approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

57.8 The Contractor shall bear its own costs in connection with any step-in by the Authority under this Clause 57.0, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

1. limbs (b) or (c) of the definition of a Step-In Trigger Event; or
2. limbs (d) or (e) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor’s Default).

# 58.0 Security of Supply

## 58.1 Financial Distress

### 58.1.1Upon request from the Authority at any time, the Contractor shall provide to the Authority last up to date audited accounts, up to date credit ratings (where the Contractor is rated by a ratings agency) and/or such other ratings and/or creditworthiness reports as the Parties mutually agree in writing) relating to the Contractor.

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### 58.1.2Where the ratings/reports referred to in clause 58.1.1 indicate any negative change to the Contractor's failure or delinquency scores over the previous reported position or any significant deterioration in the financial position of the Contractor, the Authority shall be entitled to request and the Contractor shall make available its relevant personnel for a meeting (in person or by teleconference) to review the reasons behind such changes and any proposed action by the Contractor to remedy it. The Authority shall furthermore be entitled to set reasonable thresholds below which further reports or meetings will be triggered and/or below which the Authority will have the rights set out at clause 58.1.3.

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### 58.1.3Where (i) the Authority would be entitled to request a meeting or call pursuant to clause 58.1.2 on three or more occasions during the Contract Period; or (ii) the thresholds referenced at clause 58.1.2 have been breached, and in each case no reasonable explanation has been provided by the Contractor, the Authority shall have the right to terminate the Contract forthwith on notice to the Contractor. For these purposes, a reasonable explanation would include a bona fide restructuring exercise which would have no adverse consequences for the performance of the Contractor's obligations under the Contract.

## 58.2 Guarantee or other security

## 58.2.1 Where required by the Authority, the Contractor shall procure that a guarantor shall, within 10 working days of a written request at any time to do so from the Authority, execute and deliver to the Authority a Guarantee together with a certified copy extract of the board minutes of the Guarantor approving the execution of such Guarantee, or such other form of security reasonably requested by the Authority in all the circumstances.

# 59.0 Non-Solicitation

59.1 For the duration of the Contract Period and for a period of 12 months thereafter, neither Party shall employ or offer employment to any staff of the other Party who have been associated with the delivery or receipt of the Services without the prior written approval of the Authority’s Contract Manager. A Party shall not be prevented from employing or offering employment to any member of staff of the other Party where it can demonstrate that the relevant individual was responding to a bona fide job advertisement.

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# 60.0 Importance of Reputation

60.1 The Contractor acknowledges that the Authority is subject to scrutiny by the general public and by Regulatory Bodies. The Contractor shall not take any action or omit to take any action, whether in relation to the supply of the Services or otherwise, which in the reasonable opinion of the Contract Manager would, or would be likely to, harm the reputation of the Authority (including in respect of the Contractor's dealings with any third parties).

**61.0 Not Used**

**62.0 Priority of Documents**

62.1 In the event of, and only to the extent of, any conflict between these conditions of contract and any document referred to herein, the conflict shall be resolved by reference to the descending order of priority in which they are listed below:

* General Conditions of Contract
* Schedule 1: Specification
* Schedule 2: Pricing Profile
* Schedule 3: Change Control
* Schedule 4: Performance Management Framework
* Schedule 5: Contract Governance
* Schedule 6: Exit Plan
* Schedule 7: AVS Approval Processes and Approval Maintenance
* Schedule 8: Data Sharing Agreement
* Schedule 9: Use of NIFAIS
* Schedule 10: VAT Self-Billing Agreement
* Schedule 11: Tuberculosis Testing Procedural Instructions
* Schedule 12: Veterinary Service Field General Model Risk Assessment
* Schedule 13: Contractors Key Personnel
* Schedule 14: Health and Safety at Work Policy

Annex A

**VARIATION TO CONTRACT FORM**

CONTRACT TITLE: .............................................................................................

FOR THE PROVISION OF: .................................................................................

CONTRACT REF: .............. VARIATION NO: ............... DATE: / /

BETWEEN:

|  |
| --- |
|  |

1. This Contract is varied as follows:

|  |
| --- |
|  |

1. Words and expressions in this Variation shall have the meaning/s given to them in this Contract.

3. This Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

**SIGNED:**

|  |  |
| --- | --- |
| For: The Authority Signature: .......................................Full Name: ......................................Grade: ............................................Date: .........................................….. | For: The ContractorSignature: .......................................Full Name: ......................................Grade: ............................................Date: .........................................….. |

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