

SUPPLIER AGREEMENT

PUBLIC HEALTH DPS - 1083

Parties

1) Customer

2) Supplier

BACKGROUND

- (A) YPO placed a contract notice 2021-004459 on 06/08/2021 on Find A Tender Service seeking Requests to Participate from suppliers for the provision of a Public Health DPS to YPO and Other Contracting Authorities under a Dynamic Purchasing System ("DPS").
- (B) The Supplier submitted its Request to Participate in response to the contract notice.
- (C) On the basis of the Supplier's Request to Participate, YPO admitted the Supplier onto the DPS to be able to provide Goods and/or Services (as applicable) to Contracting Authorities on a call-off basis.
- (D) All Suppliers indicated in their Requests to Participate that they will comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of these Goods and/or Services (as applicable).
- (E) The DPS will be established and managed by YPO and the Technology Provider. Suppliers may apply to be appointed to the DPS in accordance with the information contained in the DPS Establishment Documents.
- (F) This Agreement sets out the award and ordering procedure for Goods and/or Services (as applicable) which may be required by Contracting Authorities, the overarching terms and conditions for any Service Agreement which Contracting Authorities may conclude, and the obligations of the Suppliers during and after the term of this Agreement.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Accreditation and Enrolment"	means the evaluation of a supplier's Request to Participate in the DPS and the subsequent admittance to the DPS of supplies that fulfil YPO's Selection Criteria
"Agreement"	means this Agreement together with all schedules and appendices attached hereto
"Approval"	means the prior written approval of YPO
"Application Guide"	The guide issued by YPO detailing the process for joining the DPS and details the Selection Criteria. The guide is made available at http://demand.sproc.net/ClientDetails .
"Authority"	means YPO or any Other Contracting Authority as applicable
"Audit"	means an audit carried out pursuant to Clause 19
"Auditor"	means YPO internal or a YPO's member's Auditor and/or the National Audit Office or an Auditor appointed by the Audit Commission as the context requires
"Award Criteria"	means the award criteria to be applied to Offers received in response to a Requirement as set out in the Supplier Entry Guide and as may be further specified in the Requirement.
"Commencement Date"	means 06/08/2021
"Commercially Sensitive Information"	means any Confidential Information comprised of information which is provided in writing by the Supplier to YPO in confidence and designated as Commercially Sensitive Information

"Complaint"	means any formal complaint raised by any Contracting Authority in relation to the operation of the DPS or the performance of any Service Agreement in accordance with Clause 38
"Confidential Information"	<p>means:-</p> <p>(a) 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 which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and</p> <p>(b) the Commercially Sensitive Information</p> <p>and does not include any information:-</p> <p>(i) which was public knowledge at the time of disclosure (otherwise than by breach of this Agreement)</p> <p>(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</p> <p>(iv) is independently developed without access to the Confidential Information</p>
"Contracting Authority"	<p>for the purpose of this Agreement any reference to Contracting Authority shall mean any of YPO's permissible use. https://www.ypo.co.uk/about/customers/ojeu-permissible-users For the purposes of this Agreement this reference will not include a reference to YPO.</p>
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement and/or any Supplier Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Supplier Contract, including any Personal Data breach.
"Data Processor"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Protection Legislation" or DPA"	means the Data Protection Act 1998 as long as it remains in force, and when they come into force, the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

“Dynamic Purchasing System (“DPS”)”	means a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Goods and/or Services ; and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit a Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
“DPS Establishment Documents”	means the Find a Tender Notice, the Supplier Entry Guide and the Supplier Agreement.
"Environmental Information Regulations"	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"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 Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Authority
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and that require a degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or organisation engaged in providing Goods and/or Services of similar type and nature to those required under the terms of this Agreement
“Goods”	means the provision of any Goods as specified in the Requirement and/or Service Agreement
"Guarantee"	means the Deed of Guarantee in favour of YPO entered into by the Guarantor on or about the date of this Agreement [or any guarantee acceptable to YPO that replaces it from time to time]
"Guarantor"	means [REDACTED]
“Improvement Notice”	means a Notice issued on the Supplier to improve minor breaches of the Agreement, or the Supplier Contract instructing the Supplier to improve or remedy any minor breaches in the provision of the Goods and/or Services
“Independent Testing Engineer”	means an independent engineer appointed by either YPO, the Supplier or a Contracting Authority to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer’s decision shall be final as to whether or not the Goods have been installed to the required standard/specification
“Independent Testing House/Organisation”	means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Agreement or the Supplier Agreement. It is agreed that the Independent Testing House/Organisation’s decision shall be final as to whether or not the Goods meet the required standard/specification.
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000

"Intellectual Property Rights"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, 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 of any Regulatory Body
"Management Information"	means information pertaining to the Supplier's performance and the operation of the DPS: <ul style="list-style-type: none"> · Transaction Fee information; · Service Agreements breakdown, including but not limited to: Customer details, charges, service category, description of the Goods and/or Services; · Details of any issues or Complaints
"Material Default"	means any breach of clauses, 8 (Warranties and Representations), 9 (Prevention of Bribery and Corruption), 10 (Conflicts of Interest), 13 (Statutory Requirements), 14 (Transaction Fee), 18 (Provision of Management Information), 19 (Records and Audit Access), 20 (Confidentiality), 21 (Data Protection and Freedom of Information) and 29 (Transfer and Sub-contracting)
"Minor Breach"	means any breach of the Agreement, the Contract or the Service Agreement which may be either a partial breach or a breach not so severe as to warrant a Material Default.
"Month"	means a calendar month
"Offer"	means the Supplier's tender for the desired Goods and/or Services in response to the Customer's Requirement.
"Find a Tender Notice"	means the contract notice 2021-004459 on 06/08/2021 published in the Find a Tender Service.
"Operational Guide"	The guide issued by YPO detailing the operation of the procurement process and steps in the DPS and made available at http://demand.sproc.net/ClientDetails
"Other Contracting Authorities"	means all Contracting Authorities except YPO
"Parent Company"	means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term " Holding Company " shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
"Party"	means YPO and/or the Supplier
"Personal Data"	has the meaning given to it in the Data Protection Legislation as amended from time to time;

“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing and “Process” and “Processed” shall be interpreted accordingly;
“Prohibited Act”	means to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to (a) induce that person to perform improperly a relevant function or activity; or (b) reward that person for improper performance of a relevant function or activity
“Regulations”	means the Public Contracts Regulations 2015
“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 Agreement or any other affairs of YPO
“Requests for Information”	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
“Request to Participate”	means a tender prepared by a Supplier in response to the Request to Participate seeking admission onto the DPS
“Requirement”	means a detailed specification and request for Goods and/or Services made by a Contracting Authority via the Technology in relation to any contract to be awarded under the DPS.
“Selection Criteria”	means the criteria set by YPO to evaluate Requests to Participate submitted by suppliers for their admission onto the DPS and as set out in the Application Guide
“Services”	means the provision of any Services as specified in the Requirement and/or Service Agreement
“Service Agreement”	means a Contracting Authority’s acceptance of a Supplier’s final Offer in response to the Contracting Authority’s corresponding Requirement incorporating the terms of the applicable Supplier Agreement and sets out the description of the Goods and/or Services (if applicable) to be supplied, and any supplementary terms and conditions.
“Sub-Processor”	means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Agreement;
“Supplier”	means any employee, agent, servant, sub-contractor or representative of the Supplier or person employed on behalf of the Supplier to provide the Goods and/or Services (if applicable)
“Supplier Contract”	means the legally binding agreement for between a Contracting Authority and a Supplier comprising of the Service Agreement and the Supplier Agreement
“Supplier Agreement”	means the terms and conditions between the Contracting Authority and the Supplier which governs the procurement process, award and overarching terms and conditions applicable to any Service Agreements. The Supplier Agreement shall be available at http://demand.sproc.net
“Supplier Entry Guide”	means the Application Guide and Operational Guide taken together.

“Supply Category”	means the categories of products or supplies that the Supplier indicated it wishes to supply under this DPS.
"Term"	means the period commencing on the Commencement Date and ending on 06/08/2027 or on earlier termination of this Agreement
“Technology”	the proprietary web-based software called SProc.Net, which is owned and operated by the Technology Provider, or such other technology as may be agreed between the Parties
“Technology Provider”	means adam HTT Limited t/a adam, whose company registration number is 07718565 and whose registered office is located at The Pinnacle, 170 Midsummer Boulevard, Milton Keynes, MK9 1BP, VAT number 198 5733 49
“Transaction Fee”	means a fee to cover YPO and the Technology Provider’s administration costs
“Variation Procedure”	means the procedure set out in Schedule A
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales
"Year"	means a calendar year
“YPO”	means YPO or any employee, agent, servant or representative of YPO or any other public body or person employed on behalf of YPO or any other public body.
1.2	The interpretation and construction of this Agreement shall all be subject to the following provisions:-
1.2.1	words importing the singular meaning include where the context so admits the plural meaning and vice versa;
1.2.2	words importing the masculine include the feminine and the neuter;
1.2.3	the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
1.2.4	references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
1.2.5	references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
1.2.6	headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
1.2.7	references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
1.2.8	references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
1.2.9	reference to a Clause is a reference to the whole of that clause unless stated otherwise; and

1.2.10 The Supplier shall perform all Contracts entered into with a Contracting Authority in accordance with:

- (a) The requirements of this Agreement; and
- (b) The terms and conditions of the Supplier Agreement; and
- (c) The DPS Establishment Documents
- (c) The relevant Legislation, Codes of Conduct and Regulations governing the provision of technology enabled care solutions

1.2.11 In the event of, and only the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Supplier Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) Legislation
- (b) The terms of this Agreement;
- (c) The Service Agreement
- (d) The Supplier Agreement
- (e) Any other document referred to in the clauses of the Supplier Agreement

2. **TERM OF THIS AGREEMENT**

2.1 This Agreement shall take effect on the Commencement Date and shall expire at the end of the Term unless it is terminated earlier in accordance with the terms of this Agreement under Clauses 23.

2.2 The Terms of this Agreement may be reduced or extended as advertised via a Corrigendum issued through the Find a Tender Service. This Agreement shall remain in effect for the validity of the DPS.

3. **SCOPE OF THIS AGREEMENT**

This Agreement governs the relationship between YPO, the Technology Provider and the Supplier in respect of the provision of the Goods and/or Services by the Supplier to YPO and to Other Contracting Authorities.

4. **SUPPLIER'S APPOINTMENT**

YPO admitted the Supplier to the DPS as a potential Supplier of Goods and/or Services and the Supplier shall be eligible to be considered for the award of Service Agreements for such Goods and/or Services by YPO and Other Contracting Authorities during the Term.

5. **TECHNOLOGY PROVIDER'S APPOINTMENT**

5.1 The Technology Provider is authorised by YPO to assess the Accreditation and Enrolment of suppliers who have requested to be admitted to the DPS. YPO shall remain wholly responsible for the acceptance of suppliers on to the DPS.

5.2 The Technology Provider shall be authorised to act as a payment service provider to YPO and Other Contracting Authorities and shall process invoices and payments in respect of any Goods and/or Services procured through the DPS.

5.3 The Technology Provider shall, on behalf of YPO, monitor the Suppliers ongoing compliance with the Selection Criteria. The Technology Provider may validate the information provided by the Supplier with third party agencies or professional bodies.

5.4 The Technology Provider shall be responsible for collecting and collating Management Information in relation to the Supplier's performance.

6. **NON-EXCLUSIVITY**

The Supplier acknowledges that, in entering into this Agreement, no form of exclusivity or volume guarantee has been granted by YPO, the Technology Provider and/or Other Contracting Authorities for Goods and/or Services from the Supplier and that YPO and/or Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other Supplier for the provision of any or all Goods and/or Services which are the same as or similar to the Goods and/or, Services being provided under this Agreement.

7. **ESTABLISHING THE DYNAMIC PURCHASING SYSTEM**

- 7.1 The DPS shall be established and operated in line with the DPS Establishment Documents.
- 7.2 The Dynamic Purchasing System will be established using the Restricted Procedure subject to the provisions in regulation 34 of the Regulations.
- 7.3 YPO may update the Supplier Entry Guide at any time throughout the Term of the Agreement, provided that YPO provides all suppliers with fair and open access to such changes with reasonable advance notice.
- 7.4 YPO reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract and may perform audit checks of any such or existing Accreditation or Enrolment information.
- 7.5 Suppliers can be removed from the DPS as a result of their actions or failure to comply with the required minimum standards and Selection Criteria. Suppliers do however have the option to apply to be re-admitted to the DPS.
- 7.6 Should a Supplier be removed from the DPS for any other reason than failing to comply with the minimum required standards, YPO's decision will be final as to whether or not the Supplier can be re-admitted to the DPS.
- 7.7 The DPS shall remain open for the term specified in the Find a Tender notice. Should the term be extended or reduced, notice will be given to all suppliers and a Corrigendum will be issued via the Find a Tender Service. Any supplier may reapply to be admitted onto the DPS or improve its Request to Participate at any time.
- 7.8 The Supplier warrants that all information submitted as part of the Request to Participate and assessed during the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform YPO immediately and the Supplier acknowledges that YPO reserves the right to, at its sole discretion, expel or suspend the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract.

8. **WARRANTIES AND REPRESENTATIONS**

- 8.1 The Supplier warrants and represents to YPO that:-
 - 8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
 - 8.1.2 it acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Requirement if it has not signed and returned this Agreement;
 - 8.1.3 all obligations of the Supplier pursuant to this Agreement and under any Supplier Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
 - 8.1.4 it will ensure that the Supplier and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Supplier in connection with the Goods and/or Services (if applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods and/or Services (if applicable).

- 8.1.5 the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement and under any Supplier Contract.
- 8.1.6 the Supplier shall discharge its obligations under this Agreement and under any Supplier Contract with all due skill, care and diligence including but not limited to the Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 8.1.7 this Agreement is executed by a duly authorised representative of the Supplier;
- 8.1.8 in entering into this Agreement or any Supplier Contract it has not committed any Fraud;
- 8.1.9 as at the Commencement Date, all information, statements and representations contained in the Request to Participate (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the Goods and/or Services (if applicable) are true, accurate, and not misleading save as may have been specifically disclosed in writing to YPO prior to the execution of this Agreement and it will promptly advise YPO of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 8.1.10 it has not entered into, with any other person, or caused or induced any person to any agreement with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Agreement or any Supplier Contract;
- 8.1.11 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Goods and/or Services (if applicable) under the Agreement;
- 8.1.12 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- 8.1.13 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 affect its ability to perform its obligations under this Agreement and any Service Agreement which may be entered into with YPO or Other Contracting Authorities;
- 8.1.14 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Service Agreement which may be entered into with YPO or Other Contracting Authorities;
- 8.1.15 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 8.1.16 in the three (3) years prior to the date of this Agreement:-
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

8.1.17 The Supplier shall perform the Goods and/or Services (if applicable) in a conscientious and timely manner in accordance with the Supplier Contract or as reasonably required by YPO and/or the Contracting Authority.

8.1.18 The Supplier shall notify YPO's Contracting Manager immediately of any circumstances relating to the Supplier and/or YPO and/or the Contracting Authority concerning the Goods and/or Services (if applicable) of which the Supplier is aware or anticipates which may justify YPO and/or the Contracting Authority taking action to protect its interests (including its reputation and standing).

8.2 The Supplier warrants and represents the statements in Clause 8.1 above to each of the Other Contracting Authorities.

9. PREVENTION OF BRIBERY AND CORRUPTION

9.1 The Supplier:

9.1.1 has not, will not, and will procure that its staff (and any sub-contractor or self-employed staff) have not committed and will not commit a Prohibited Act in connection with this Agreement;

9.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive

9.1.3 warrants represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by YPO or that an agreement has been reached to that effect in connection with the securing or execution of this Agreement, or any other Agreement with YPO, excluding any arrangements of which full details have been disclosed in writing to YPO prior to the execution of this Agreement.

9.2 The Supplier will upon request provide YPO with all reasonable assistance to enable YPO to perform any activity required for the purposes of complying with the Bribery Act, as may be required of YPO by any relevant government or agency in any relevant jurisdiction. Should YPO request such assistance YPO shall pay the reasonable expenses of the Supplier arising as a result.

9.3 The Supplier will provide to YPO certification (if requested to do so), in writing and signed by an officer of the Supplier, of the compliance with this Clause 9 by:

9.3.1 the Supplier and

9.3.2 all persons associated with the Supplier; and

9.3.3 any other persons who are supplying Goods and/or Services (if applicable) in connection with this Agreement.

9.4 Where requested to provide certification under clause 9.3, certification will be provided to YPO within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by YPO.

9.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to YPO upon request and enforced by the Supplier where appropriate.

9.6 Should the Supplier become aware of or suspect any breach of Clause 9.1 it will notify YPO immediately.

9.7 Following notification under Clause 9.6 the Supplier will respond promptly and fully to the enquiries of YPO, cooperate with any investigation undertaken by YPO and allow YPO to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 9 shall survive the expiry or termination of this Agreement for a further period of 6 years.

- 9.8 YPO may recover in full from the Supplier and the Supplier shall indemnify YPO in full from and against any other loss sustained by YPO in consequence of any breach of this Clause 9 whether or not this Agreement has been terminated.
- 9.9 YPO may terminate this Agreement and any Service Agreement immediately upon serving written notice if the Supplier, its staff, any sub-contractor or self-employed staff whether or not acting with the Supplier's knowledge, breaches Clause 9.1. Before exercising its right of termination under this Clause YPO will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 9.9.1 the Supplier or a senior officer of the Supplier; or
 - 9.9.2 a member of Staff, Sub-Contractor or Agent who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier, Sub-Contractor or Agent) means and shall be construed as acting:
 - (a) with the authority of; or
 - (b) with the actual knowledge; of any one or more of the Supplier's or Sub-Contractors or Agent (as applicable) directors (or Partners); or
 - (c) in circumstances where any one or more of the directors (or Partners) of the Supplier or subcontractor (as applicable) ought reasonably to have had knowledge.
- 9.10 Any notice of termination by YPO under Clause 9.9 must specify:
- 9.10.1 the nature of the Prohibited Act;
 - 9.10.2 the identity of the person whom YPO believes has committed the Prohibited Act; and
 - 9.10.3 the date on which this Agreement will terminate.
- 9.11 In the event of any breach of Clause 9.1 YPO is entitled to recover from the Supplier the value of any gift, consideration or commission.
- 9.12 Notwithstanding Clause 40 (Dispute Resolution) any dispute relating to:
- 9.12.1 the interpretation of this Clause 9 or
 - 9.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by YPO and its decision shall be final and conclusive
- 9.13 Termination under Clause 9.9 will :
- 9.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to YPO under this Agreement.
 - 9.13.2 prohibit the Supplier from claiming any damages for early termination; and
 - 9.13.3 allow YPO to recover from the Supplier the amount of any loss suffered by YPO resulting from the termination; or
 - 9.13.4 entitle YPO to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods and/or Services (if applicable) from another party.

10. **CONFLICTS OF INTEREST**

- 10.1 The Supplier shall take appropriate steps to ensure that it is not placed in a position where (in the reasonable opinion of YPO) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to YPO and Other Contracting Authorities under the provisions of this Agreement or any Supplier Contract.

- 10.2 The Supplier shall promptly notify and provide full particulars to YPO or the relevant Contracting Authority if such conflict as referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.
- 10.3 YPO reserves the right to terminate this DPS immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of YPO, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to YPO under the provisions of this Agreement or any Supplier Contract. The action of YPO pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to YPO.
- 10.4 This Clause shall apply during the Term.

11. **TENDERING FROM THE DPS – ORDERING PROCEDURE;**

Responsibility of Awards

- 11.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Service Contracts under the Agreement and that YPO is not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 11.1.1 the conduct of Other Contracting Authorities in relation to the Agreement; or
- 11.1.2 the performance or non-performance of (including payments due under) any Service Agreement between the Supplier and Other Contracting Authorities entered into pursuant to the Agreement.

12. **PRICES FOR GOODS AND/OR SERVICES (IF APPLICABLE)**

- 12.1 The prices specified in the Supplier's Offer in response to the Contracting Authority's Requirements will be fixed for the agreed time within the DPS Establishment Documents.
- 12.2 Unless otherwise expressly stated in the Agreement or the Supplier Contract the prices shall cover all the Supplier's obligations under the Agreement or the Supplier Contract and everything necessary for the provision of the Goods and/or Services (if applicable) under the Supplier's Supply Category.
- 12.3 Unless otherwise expressly stated in this Agreement or the Supplier Contract no claim by the Supplier will be allowed for any addition to the prices on the grounds of any matter relating to any document forming part of the Agreement, the Supplier Contract or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to YPO or Other Contracting Authorities by any other appropriate means.

13. **STATUTORY REQUIREMENTS**

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Supplier Contract.

14. **TRANSACTION FEE**

- 14.1 A Transaction Fee shall be calculated, as set out below, of the Charges to all Service Agreements placed in relation to this Agreement and to any Supplier Agreements in each year of the Term.
- 3% for contract values up to £5m
- 1.5% for contract values between £5m and £10m
- 1% for contract values between £10m and £20m
- 0.5% for contract values above £20m
- 14.2 The Technology Provider shall deduct the Transaction Fee from any payments due to the Supplier from the Customer. The Technology Provider shall be responsible for paying YPO the applicable Transaction Fee.

- 14.3 For the avoidance of doubt the Transaction Fee shall be payable on all individual Service Agreements during the full term of the Agreement including any extensions thereto.
- 14.4 All Transaction Fees are non-refundable and subject to VAT where applicable.

15. **SOCIAL RESPONSIBILITY**

- 15.1 The Supplier shall and shall ensure that any of its servants, employees, agents or sub-contractors employed in the execution of this Agreement:
- 15.1.1 Perform its obligations under this Agreement (including those in relation to the Goods and/or Services (if applicable)) in accordance with:
- (a) All applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) YPO's or any Other Contracting Authorities equality and diversity policy as provided to the Supplier from time to time; and
 - (c) Any other requirements and instructions which the Contracting Authority reasonably imposes in connection with any equality obligations imposed on the Contracting Authority at any time under the applicable equality law; and
 - (d) Take all necessary steps, and inform the Contracting Authority of the steps taken, to prevent unlawful discrimination designated as such by any court, tribunal, or Equality and Human Rights Commission or (any successor organisation)
- 15.2 The Supplier shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving Goods and/or Services (if applicable) from the performance of the Agreement or any Service Agreement and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 15.3 The Supplier must ensure that all employees of the Supplier involved in the supply of the Goods and/or Services (if applicable) are eligible to work in the UK.
- 15.4 YPO shall be entitled at YPO's expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance in accordance with Clause 19.
- 15.5 The cost to the Supplier of complying with this Clause 15 shall be included in the prices.

16. **SUPPLIERS STAFF**

- 16.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Agreement and each Supplier Agreement only such persons as are appropriately certified, skilled and experienced in the delivery of these type of Goods and/or Services (if applicable).
- 16.2 The Supplier and the Supplier's sub-contractors, staff and agents shall comply with all reasonable requirements of YPO and any Other Contracting Authority.
- 16.3 The Supplier shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 16.1 and 16.2.
- 16.4 The Supplier, its agents, and sub-contractors shall employ sufficient staff to ensure that the Goods and/or Services (if applicable) as specified in the Requirement are provided at all times and in accordance with the Agreement and each Supplier Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to supply the Goods and/or Services (if applicable) in accordance with this Agreement during staff holidays or absence through sickness or any other cause.

17. **SUPPLIER CONTRACT PERFORMANCE**

- 17.1 The Supplier shall perform all Service Agreements entered into with YPO or any Other Contracting Authority in accordance with:-
- 17.1.1 the requirements of this Agreement; and
 - 17.1.2 the terms and conditions of the Supplier Agreement.

17.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement and the terms and conditions of a Supplier Agreement, the precedence list in Clause 1.2.11 will be applicable

18. MANAGEMENT INFORMATION

- 18.1 The Technology Provider shall collate the Management Information relating to the Supplier from the Technology on a quarterly basis.
- 18.2 The Technology Provider shall utilise the Management Information to generate a management report pertaining to all Service Agreements processed through the DPS which shall be provided to YPO on a quarterly basis
- 18.3 YPO and the Technology Provider may share the Management Information supplied by the Supplier with any Contracting Authority

19. RECORDS AND AUDIT ACCESS

- 19.1 The Supplier shall keep and maintain full and accurate records and accounts of the operation of this Agreement including the Goods and/or Services (if applicable) provided under it, the Service Agreements entered into with Contracting Authorities and the amounts paid by Contracting Authorities until six (6) years after the date of termination or expiry of the Agreement.
- 19.2 The Supplier shall afford YPO, the Technology Provider and/or the Auditor access to such records and accounts as may be required from time to time.
- 19.3 The Supplier shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six (6) years after expiry of the Term to YPO (or the relevant Contracting Authority) and the Auditor.
- 19.4 YPO shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services (if applicable) pursuant to the Service Agreement, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of YPO.
- 19.5 Subject to YPO's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
- 19.5.1 all information requested by the Auditor within the scope of the Audit;
 - 19.5.2 reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services (if applicable); and
 - 19.5.3 access to the Staff.
- 19.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse YPO for reasonable costs incurred in relation to the Audit.

20. CONFIDENTIALITY

- 20.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

20.2 Clause 20 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- (e) it is independently developed without access to the other party's Confidential Information.

20.3 The Supplier may only disclose YPO's Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services (if applicable) and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

20.4 The Supplier shall not, and shall procure that its Staff do not, use any of YPO's Confidential Information received otherwise than for the purposes of this Agreement.

20.5 Nothing in this Agreement shall prevent YPO and/or the Contracting Authority from disclosing the Supplier's Confidential Information:

- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or 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 Crown Body or any Contracting Authority;
- (b) to any consultant, Supplier or other person engaged by the Contracting Authority or any person conducting a gateway review;
- (c) for the purpose of the examination and certification of YPO's accounts;
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

20.6 Nothing in this Clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights

20.7 The Supplier shall not without the prior written consent of YPO divulge the existence of this Agreement, any Supplier Agreement or any Service Agreement or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of this Agreement.

20.8 In the event that the Supplier fails to comply with this Clause 20, YPO reserves the right to terminate the Agreement by notice in writing with immediate effect.

20.9 The provisions of this Clause 20 shall apply notwithstanding termination of the Agreement.

21. **DATA PROTECTION ACT, FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS**

21.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that YPO is the Data Controller and that the Supplier is the Data Processor.

21.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from YPO to perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of YPO (save where such disclosure or transfer is specifically authorised under this Agreement)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under the Agreement;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by YPO or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify YPO immediately if it becomes aware of a Data Loss Event or if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to YPO's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide YPO with full cooperation and assistance (within the timescales reasonably required by YPO) in relation to any complaint, communication or request made (as referred to at Clause 21.2 (e)) including by promptly providing:
 - (i) YPO with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by YPO to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) YPO, on request by YPO, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by YPO, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 21 and provide to YPO copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

21.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer

any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to YPO which, if it is agreed by YPO, shall be dealt with in accordance with the Variation Procedure;
- (b) the Supplier shall set out in its proposal to YPO for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure YPO's compliance with the DPA;
- (c) In providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current YPO, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as YPO may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (1) a direct data processing agreement with YPO on such terms as may be required by them; or
 - (2) a data processing agreement with the Supplier on terms which are equivalent to those agreed between YPO and the Sub-Contractor relating to the relevant Personal Data transfer, and
 - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which YPO deems necessary for the purpose of protecting Personal Data.

21.4 The Supplier shall use its reasonable endeavours to assist YPO to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause YPO to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

21.5 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

21.6 Before allowing any Sub-Processor to process any Personal Data related to this Agreement, the Supplier shall:

- (a) notify YPO in writing of the intended Sub-Processor and processing;

- (b) obtain the written consent of YPO;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 21 such that they apply to the Sub-Processor; and provide YPO with such information regarding the Sub-Processor as they may reasonably require.

21.7 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS

21.8 The Supplier acknowledges that YPO and Contracting Authorities are subject to the requirements of the FOIA and the EIR and shall assist and cooperate with YPO to enable YPO to comply with its Information disclosure obligations.

21.9 The Supplier shall and shall procure that its Staff shall:

21.9.1 transfer to YPO all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

21.9.2 provide YPO with a copy of all Information in its possession, or power in the form that YPO requires within five (5) Working Days (or such other period as YPO may specify) of YPO's request; and

21.9.3 provide all necessary assistance as reasonably requested by YPO to enable YPO to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR

21.10 YPO 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 EIR.

21.11 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by YPO.

21.12 The Supplier acknowledges that (notwithstanding the provisions of Clause 20 Confidentiality) the Contracting 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 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Supplier or the provision of Goods and/or Services under this Agreement:

21.12.1 in certain circumstances without consulting the Supplier; or

21.12.2 following consultation with the Supplier and having taken their views into account;

provided always that where this Clause 21 applies YPO shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

22. PUBLICITY

22.1 Unless otherwise directed by YPO, the Supplier shall not make any press announcements or publicise this Agreement in any way without YPO's prior written consent.

22.2 YPO shall be entitled to publicise this Agreement in accordance with any legal obligation upon YPO, including any examination of this Agreement by the Auditor.

23. TERMINATION

Termination on Default

23.1 YPO may terminate this Agreement by serving written notice on the Supplier with effect from the date specified in such notice where:-

- 23.1.1 the Supplier are using staff that are not certified, qualified and trained in the delivery of these types of Goods and/or Services (as applicable);
- 23.1.2 the Supplier and its Staff, agents, sub-contractors, or personnel employed by the Supplier in connection with the Goods and/or Services (if applicable) have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods and/or Services.

Termination on Default – Minor Breaches

- 23.2 Where the Supplier commits a Minor Breach of the Agreement, YPO shall be entitled to issue the Supplier with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Supplier a minimum of thirty (30) Working Days to remedy the Minor Breach.
- 23.3 If the Supplier commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Agreement may be terminated in accordance with Clause 23.4(c).

Termination on Default – Material Default

- 23.4 YPO may terminate the Agreement by serving written notice on the Supplier with effect from the date specified in such notice, where the Supplier commits a Material Default and:-
- (a) the Supplier has not remedied the Material Default to the satisfaction of YPO within twenty (20) Working Days, or such other period as may be specified by YPO, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
 - (b) the Material Default is not capable of remedy; or
 - (c) if the Supplier has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.
 - (d) where any Contracting Authority terminates a Supplier Contract awarded to the Supplier under this Agreement as a consequence of default by the Supplier.
 - (e) where any Goods have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and/or any contributory associated services (as applicable) do not meet the minimum required standards/specification, the Agreement, and the Supplier Agreement may be terminated and all outstanding Service Agreements may be cancelled at no cost and without any liability to YPO or the Customer.

TERMINATION ON FINANCIAL STANDING

- 23.5 YPO may terminate this Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of YPO), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Goods and/or Services under this Agreement. This may be checked throughout the life of the DPS.
- 23.6 Suppliers if requested by YPO must provide latest financial accounts.
- 23.7 YPO in order to ascertain or track any material detrimental change of the financial standing of the Supplier may use an external credit rating agency. This will then be clarified with the Supplier before any reasonable decision is made.

TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 23.8 YPO may terminate this Agreement with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier if any event listed in Regulation 57 of the Public Contracts Regulations 2015 occurs or seems likely to occur
- 23.9 The Supplier shall notify YPO immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). YPO

may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-

23.9.1 being notified that a Change of Control has occurred; or

23.9.2 where no notification has been made, the date that YPO 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.

TERMINATION BY YPO

23.10 YPO shall have the right to terminate this Agreement and/or the DPS, or to terminate the provision of any part of this Agreement at any time by giving three months' written notice to the Supplier. The Parties acknowledge that if YPO exercises its rights under this Clause, it shall exercise its equivalent rights under all agreements with suppliers admitted to the DPS.

24. SUSPENSION OF SUPPLIER'S APPOINTMENT

24.1 Without prejudice to YPO's rights to terminate the Agreement in Clause 23 above, if a right to terminate this Agreement arises in accordance with these terms and conditions, YPO may suspend the Supplier's appointment to supply Goods and/or Services to Contracting Authorities by giving notice in writing to the Supplier. If YPO provides notice to the Supplier in accordance with this Clause 24, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by YPO in writing from time to time.

24.2 Should YPO or any Other Contracting Authority request Goods or associated services testing for any reason whatsoever the Supplier will be suspended from the DPS (at no cost to YPO or the Contracting Authority) whilst this testing takes place and will not be allowed to tender until completion of the testing. Any Service Agreements already placed during this period shall be put on hold pending the outcome of the testing.

24.3 A Supplier's appointment may be suspended to allow YPO and/or a Contracting Authority the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Goods and/or Services under this Agreement. Should this occur the Supplier will be suspended from the DPS (at no cost to YPO or the Contracting Authority) whilst investigations take place and the Supplier will not be allowed to submit Offers against Requirements from Customers during this period. Any Service Agreements already placed during this period shall be put on hold pending the outcome.

24.4 Following suspension of a Supplier's appointment under this Clause 24 the Supplier will be informed of the outcome as soon as possible and be advised:

(a) whether or not they have been reinstated to the DPS

(b) they have been removed from the DPS with immediate effect

25. CONSEQUENCES OF TERMINATION AND EXPIRY

25.1 Notwithstanding the service of a notice to terminate this Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 25.

25.2 Termination or expiry of this Agreement and/or the DPS shall not cause any Supplier Contracts to terminate automatically. For the avoidance of doubt, all Supplier Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

25.3 Within thirty (30) Working Days of the date of termination or expiry of this Agreement and/or the DPS, the Supplier shall return to YPO any data and Confidential Information belonging to YPO in the Supplier's possession, power or control, either in its then current format or in a format nominated by YPO, together with all training manuals and other related documentation, and any other information and all copies thereof owned by YPO, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Agreement, or such period as is necessary for such compliance.

- 25.4 YPO shall be entitled to require access to data or information arising from the provision of the Goods and/or Services from the Supplier until the latest of:-
- 25.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Agreement; or
 - 25.4.2 the expiry of a period of three (3) Months following the date on which the Supplier ceases to provide Goods and/or Services (if applicable) under any Service Agreement
- 25.5 Termination or expiry of this Agreement and/or the DPS shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.
- 25.6 The provisions of Clauses 8, 9, 10, 14, 15, 16, 17, 19, 20, 21 and 22 shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.
- 25.7 In the event of any termination of the Agreement whether under this Clause 25 or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Other Contracting Authority under this Agreement or otherwise, the Other Contracting Authority shall be entitled to obtain a refund of any Charges paid by the Contracting Authority in respect of any Goods, Services and/or works (if applicable) which have not been performed by the Provider in accordance with the terms of the Agreement.
- 25.8 Suppliers can be removed from the DPS as a result of their actions, failure to comply with the required minimum standards or the terms and conditions of this Agreement. Suppliers do however have the option to apply to be re-admitted to the DPS.
- 25.9 Should a Supplier be removed/ terminated from the DPS for failing to comply with the minimum required standards or the terms and conditions of this Agreement, YPO's decision will be final as to whether or not the Supplier can be re-admitted to the DPS.

26. **LIABILITY**

- 26.1 Neither Party excludes or limits its liability for:-
- 26.1.1 death or personal injury caused by its negligence, or that of its staff;
 - 26.1.2 Fraud or fraudulent misrepresentation by it or its Staff; or
 - 26.1.3 breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.
- 26.2 Subject to Clause 26.1 each Party's total aggregate liability in connection with this Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 125% of the annual contract price paid by Contracting Authority(s) under the Supplier Agreement for provision of the Goods and/or Services (if applicable). For the avoidance of doubt, the Parties acknowledge and agree that this Clause 26.2 shall not limit either Party's liability under any Supplier Contract and that each Party's liability in relation to a Supplier Contract shall be as set out in the Supplier Agreement.
- 26.3 Subject to Clause 26.2 above, the Supplier shall indemnify and keep indemnified YPO in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Agreement including in respect of any loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, financial loss arising from provision and the quality or installation of any Goods and/or Services (if applicable) or any other loss which is caused directly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff, or by any circumstances within its or their control.

27. **INSURANCE**

- 27.1 The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Agreement including death or personal injury, or loss of or damage to property.
- 27.2 The Supplier shall effect and maintain the following insurances for the duration of the Agreement in relation to the performance of the Agreement:-
- 27.2.1 public liability insurance adequate to cover all risks in the performance of this Agreement from time to time;
 - 27.2.2 products insurance adequate to cover all risks in the performance of this Agreement from time to time;
 - 27.2.3 employer's liability insurance with a minimum limit of indemnity as required by law from time to time; and
- 27.3 Any excess or deductibles under such insurance (referred to in Clause 27.1 and Clause 27.2 above) shall be the sole and exclusive responsibility of the Supplier.
- 27.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Agreement.
- 27.5 The Supplier shall produce to YPO, 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.
- 27.6 The Supplier shall maintain the insurances referred to in Clauses 27.1 and Clause 27.2 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement

28. **GUARANTEE (IF REQUIRED)**

- 28.1 Before the Commencement Date, the Supplier shall procure that the Guarantor shall:
- 28.1.1 execute and deliver to YPO the Guarantee;
 - 28.1.2 deliver to YPO a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

29. **TRANSFER AND SUB-CONTRACTING**

- 29.1 This Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of YPO. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Agreement without the express prior written consent of YPO (such consent not to be reasonably withheld or delayed).
- 29.2 YPO shall be entitled to:-
- 29.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Other Contracting Authority; or
 - 29.2.2 novate this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by YPO;
- provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under this Agreement.

30. **VARIATIONS TO THIS AGREEMENT**

Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule A.

31. **DYNAMIC PURCHASING SYSTEM REVIEW**

The DPS and this Agreement shall be reviewed annually in accordance with the provisions hereof.

32. RIGHTS OF THIRD PARTIES

Save as provided herein the rights specified in this Agreement for the benefit of Contracting Authorities (including where any provision of this Agreement is also stated to apply to a Supplier Contract), a person who is not party to this Agreement ("**Third Party**") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

33. SEVERABILITY

- 33.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated.
- 33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, YPO and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

34. CUMULATIVE REMEDIES

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

35. WAIVER

- 35.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, 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 Agreement.
- 35.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 37 (Notices).
- 35.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

36. ENTIRE AGREEMENT

- 36.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 36.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 36.3 Nothing in this Clause 36 shall operate to exclude Fraud or fraudulent misrepresentation.

37. NOTICES

- 37.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.
- 37.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party as referred to in this Clause 37. Provided the relevant communication is not returned as undelivered, the notice or communication shall

be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

For the purposes of Clause 37 the address of each Party shall be:

For YPO:-

Address: 41 Industrial Park, Wakefield, WF2 0XE

For the attention of: The Contracting Manager

Tel: 01924 821797

Email: contracts@ypo.co.uk

For the Supplier:-

The address as set out in Supplier's profile in the Technology.

Either Party may change its address for service by serving a notice in accordance with this Clause.

38. COMPLAINTS HANDLING AND RESOLUTION

- 38.1 The Supplier shall notify the Technology Provider and YPO of any Complaint made by Other Contracting Authorities within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.
- 38.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Agreement or a Supplier Agreement, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Agreement or a Supplier Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

39. FORCE MAJEURE

Neither party shall be in breach of the Contract for any delay in or failure to perform its obligations under the Contract resulting from strike, lockout (other than strike or lockout which is limited to the Suppliers personnel), war, civil commotion, cessation or serious interruption of communication or power supplies, exceptional adverse weather conditions, fire. The parties shall immediately notify each other stating the likely length of disruption and the steps being taken to minimise the disruption. YPO or the appropriate Contracting Authority will notify the Supplier within 30 days whether it requires the provision of the Goods and/or Services (if applicable) to be recommenced, varied or cancelled (without further liability on either party).

40. DISPUTE RESOLUTION

- 40.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 37 above.
- 40.2 If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 it shall be referred to the Director or Executive Director of the respective Parties for resolution.
- 40.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 40.4 If the dispute cannot be resolved by the Parties pursuant to Clause 40.2 the Parties shall refer it to mediation pursuant to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure unless:
- 40.4.1 YPO considers that the dispute is not suitable for resolution by mediation; or

40.4.2 the Supplier does not agree to mediation.

40.5 The obligations of the Parties under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and its employees, personnel and associates shall comply fully with the requirements of this Agreement at all times.

41. **LAW AND JURISDICTION**

The Parties accept the exclusive jurisdiction of the English courts and agree that this Agreement be governed by and construed according to English Law.

Schedule 1: Self-Billing Procedure

1.1

1.2 The Customer and the Supplier shall adhere to the conditions imposed by HM Revenue and Customs in respect of the self-billing invoices, as may be amended from time to time.

2. The Supplier agrees:

2.1 to complete and submit in the Technology, at such regular (e.g. weekly or monthly) intervals as shall be determined by the Customer, a Service Receipt relating to the period preceding its submission;

2.2 to accept the electronic delivery of Self-Billing Invoices raised on its behalf by the Customer in respect of Goods and/or Services provided to the Customer based on the Service Receipts submitted under paragraph (i);

2.3 not to issue VAT invoices in respect of the Goods and/or Services;

2.4 where for internal compliance reasons the Supplier raises dummy invoices, that it will reconcile such dummy invoices against the Self-Billing Invoices

2.5 to reconcile its accounts with any factoring company as may be applicable from time to time;

2.6 to only submit a paper-copy Service Receipt where pre-agreed in writing with the Customer;

2.7 subject to (vi) above, to ensure the Technology's Service Receipt submission system is used to capture all Charges for the provision of the Goods and/or Services;

2.8 to ensure that hours, hour types, rates and expenses are verified prior to submission of Service Receipts;

2.9 to raise any discrepancies between a Self-Billing Invoice raised by the Customer and invoicing data in its internal records within seven (7) days of its receipt of such Self-Billing Invoice;

2.10 to notify the Customer and the Technology Provider immediately if it changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;

2.11 to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.

3. The Supplier agrees and acknowledges that:

3.1 the Customer's obligations under this Self-Billing Procedure will be carried out on its behalf via the Customer's third-party payment agent, the Technology Provider;

3.2 where there is a material breach of paragraph 2 above, the Customer may in its sole discretion delay processing payment of the Charges due to the Service Provider under the Self-Billing Invoice that the breach pertains to until or unless the breach is remedied.

3.3 that the Self-Billing process and payments made under this Self-Billing Agreement shall be performed via the Technology Provider as the Customer's payment service provider. For the avoidance of doubt, nothing in this Self-Billing Agreement or the Supplier Agreement shall operate to transfer any debt or amount owed between the Supplier and the Customer to the Technology Provider, and the Supplier acknowledges that payment via the Technology Provider shall be dependent upon the Technology Provider receiving cleared funds from the Customer.

4. The Supplier warrants the accuracy of the information it completes and uploads within the Technology including but not limited to the bank details it submits and undertakes to inform the Customer and/or the Technology Provider immediately of any changes to this information.
5. The Customer agrees:
 - 5.1 to only raise a Self-Billing Invoice on behalf of the Supplier once an appropriate Service Receipt has been created and agreed between the parties within the Technology;
 - 5.2 wherever reasonably possible, to deliver a valid Self-Billing Invoice electronically to the Supplier at regular (e.g. weekly or monthly) intervals;
 - 5.3 to include on each such invoice the Supplier's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
 - 5.4 to inform the Supplier of any relevant changes to the Customer's VAT registration status and to agree a new Self-Billing Procedure with the Supplier should this be necessary as a result.
6. The Customer will not accept any liability for payment of any of the Supplier's services where the Supplier does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Technology's online Service Receipt system, or such other application as directed by the Customer from time to time.
7. For the avoidance of doubt, any payment properly due to the Supplier will be made in accordance with the terms and conditions of this Supplier Agreement.
8. The parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue and Customs in respect of self-billing invoicing procedures.
9. For the avoidance of doubt, this Self-Billing Procedure shall be conterminous with the duration of this Supplier Agreement but shall be subject to annual review by the parties.