

Contract for the Provision of Services. Gender Pay Gap in Medicine Review

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The Authority	The Secretary of State for Health and Social Care of Quarry House, Leeds LS2 7UE acting as part of the Crown
The Contractor	University of Surrey which is a Royal Charter Company registered in England and Wales under company number RC000671
Date	1 st May 2018

1. Background

- 1.1. The Authority placed a contract notice in the Contracts Finder portal on 21st March 2018 seeking tenders from providers of the Gender Pay Gap in Medicine Review interested in entering into an arrangement for the supply of such services to the Authority.
- 1.2 On 21/03/2018 the Authority issued an invitation to tender (the "Invitation to Tender") for the provision of Services – Gender Pay Gap review in Medicine. In response to the Invitation to Tender, the Contractor submitted a tender to the Authority on 17/04/2018 (the "Tender"). On the basis of the Tender, the Authority selected the Contractor to enter into an agreement to provide such services to the Authority.

2. The Contract

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Tender
Schedule 6	Pricing
Schedule 7	Contract Monitoring
Schedule 8	Commercially Sensitive Information
Schedule 9	Variation Form
Schedule 10	Staff Transfer
Schedule 11	Key Personnel
Schedule 12	Exit Plan and Service Transfer Arrangements

ITT 118 – Gender Pay Gap in Medicine Review
Contract for the provision of Services

Signed by the authorised representative of THE AUTHORITY

Name:	Information redacted in line with Section 40 of FOIA	Signature	Information redacted in line with Section 40 of FOIA
Position:	Information redacted in line with Section 40 of FOIA		

Signed by the authorised representative of THE CONTRACTOR

Name:	Information redacted in line with Section 40 of FOIA	Signature	Information redacted in line with Section 40 of FOIA
Position:	Information redacted in line with Section 40 of FOIA		

Schedule 1 - Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 15 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

2 Term

- 2.1 This Contract shall commence on **8th May 2018** ("the **Commencement Date**") and the Term of this Contract shall expire on **31st December 2018** ("the **Expiry Date**"). The Term may be extended in accordance with Clause 2 (Extension) of Schedule 2 provided that the duration of this Contract shall be no longer than 9 months in total.

3 Authority Representative and Contractor Representative

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

- 3.1.1 for the Authority:

- Information redacted in line with Section 40 of FOIA**

- 3.1.2 for the Contractor:

- Information redacted in line with Section 40 of FOIA**

4 Names and addresses for notices

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

- 4.1.1 for the Authority:

- Information redacted in line with Section 40 of FOIA**

- 4.1.2 for the Contractor:

- Information redacted in line with Section 40 of FOIA**

5 Order of precedence

5.1 Subject always to Clause 1.3 of Schedule 3, in the event of any conflict between any parts of this Contract the order of precedence shall be:

5.1.1 Schedule 1 (Key Provisions);

5.1.2 Schedule 4 (Specification);

5.1.3 Schedule 5 (Tender) (but only in respect of the Authority's requirements);

5.1.4 Schedule 2 (General Terms and Conditions);

5.1.5 Schedule 8 (Commercially Sensitive Information);

5.1.6 Schedule 10 (Staff Transfer);

5.1.7 Schedule 3 (Definitions and Interpretations); and

5.1.8 the order in which all subsequent Schedules, if any, appear.

6 Application of TUPE at the commencement of the provision of Services

6.1 The Parties agree that:

6.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 10 shall apply as follows:

(a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 10 shall apply;

(b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of Schedule 10 shall apply;

(c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Contractor Employees, Parts A and B of Schedule 10 shall apply; and

(d) Part C of Schedule 10 shall not apply;

6.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 (shall not apply; and

6.1.3 Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services.

Optional Key Provisions

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

7.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 1.3 of Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule **Not Used**.

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

8.1 The Services Commencement Date shall be **Not Used**.

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

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

Type of insurance required	Minimum cover
Employer's Liability	not less than £1,000,000 per claim (unlimited claims)
Public Liability	not less than £1,000,000 per claim (unlimited claims)
Professional Indemnity	Not less than £1,000,000 per claim

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

- 10.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in this Clause 10.
- 10.2 Subject to the provisions of this Clause 10 and Clause 5 (Price Adjustment on Extension of Term) of Schedule 2, either Party may request a variation to the Contract provided that such variation does not amount to a substantial modification of the Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 10.3 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 10.4 Where the Authority has so specified on receipt of a Variation Form from the Contractor, the Contractor shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- 10.4.1 details of the impact of the proposed Variation on the Services and the Contractor's ability to meet its other obligations under the Contract;
 - 10.4.2 details of the cost of implementing the proposed Variation;
 - 10.4.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 10.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 10.4.5 such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 10.5 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

10.6 Subject to Clause 10.4 of this Schedule 1, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.

10.7 In the event that:

10.7.1 the Contractor is unable to agree to or provide the Variation; and/or

10.7.2 the Parties are unable to agree a change to the Contract Price may be included in a request of a Variation or response to it as a consequence thereof,

the Authority may:

(A) agree to continue to perform its obligations under the Contract without the Variation; or

(B) terminate the Contract with immediate effect, except where the Contractor has already fulfilled part or all of the provision of the Services in accordance with the Contract or where the Contractor can show evidence of substantial work being carried out to provide the Services under the Contract,

and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure set out at Clause 42 (Dispute Resolution) of Schedule 2.

10.8 If the Parties agree the Variation, the Contractor shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

10.9 Within ten (10) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Contract from the Contractor the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Contract is approved. Following

approval the Contractor shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

11 Guarantee (only applicable to the Contract if this box is checked)

11.1 The Contractor shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority not later than 21 Working Days of the date of this Contract. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

12 Termination for convenience (only applicable to the Contract if this box is checked and Clause 12 of this Schedule 1 is completed)

12.1 The Authority may terminate this Contract at any time by giving not less than one (1) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice.

12.2 Subject to Clauses 19 (Liability) and 20 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with Clause 12.1 of this Schedule 1, then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. 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 12.1 of this Schedule 1.

12.3 The Authority shall not be liable under Clause 12.2 of this Schedule 1 to pay any sum which:

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

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

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

13 Measures to promote tax compliance (only applicable to the Contract if this box is checked)

13.1 The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 6.2 and 23.3.3 of Schedule 2, together with the associated definitions in Schedule 3, shall apply.

14 Authority step-in rights (only applicable to the Contract if this box is checked and the Schedule inserted)

14.1 If the Contractor is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule **Not Used**.

15 Exit and Service Transfer (only applicable to the Contract if this box is checked)

15.1 In the event of the termination or expiry of the Contract for any reason the Contractor shall provide the Transitional Assistance Services to the Authority in accordance with the requirements of the Exit Plan and both Parties shall comply with their respective obligations set out in Schedule 12. The Contractor shall co-operate with the Authority and/or the Replacement Contractor to the extent reasonably required to facilitate the smooth migration of the Services from the Contractor to the Authority or the Replacement Contractor.

15.2 The Authority shall pay the Transitional Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated the Contract pursuant to Clauses 22, 23.2 or 23.3 of Schedule 2.

15.3 The Contractor shall, within three (3) Months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 12 for the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination or expiry of the Contract. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to

agree the contents of that Exit Plan, based on the principles set out in Schedule 12. If the Parties are unable to agree the contents of the Exit Plan within that ten (10) Working Day period, the principles set out in Schedule 12 shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.

15.4 The Contractor shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Contractor shall:

15.4.1 submit the revised Exit Plan to the Authority for review;

15.4.2 within ten (10) Working Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 12 and the changes that have occurred in the Services since the Exit Plan was last agreed; and

15.4.3 if the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.

15.5 Until the agreement of the Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 12 and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Contractor shall ensure that it is able to implement the Exit Plan at any time.

15.6 Within thirty (30) days after service of a Termination Notice by either Party or six (6) Months prior to the expiration of the Contract:

15.6.1 the Contractor shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval; and

15.6.2 the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 12; and

- 15.6.3 until the agreement of the updated Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.

Schedule 2 - General Terms and Conditions

1 PROVISION OF SERVICES

- 1.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
 - 1.1.4 in accordance with the Law;
 - 1.1.5 in accordance with the Anti-slavery Policy; and
 - 1.1.6 in accordance with Good Industry Practice.
- 1.2 The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 1.3 Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Contractor shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Contractor shall comply with the full Implementation Plan.
- 1.4 The Contractor shall commence delivery of the Services on the Services Commencement Date.
- 1.5 The Contractor shall comply fully with its obligations set out in the Specification and the Tender.
- 1.6 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Contract or differs in any way from those requirements, and this is other than as a result of a Default

by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

1.7 The Contractor shall notify the Authority as soon as it becomes aware of:

1.7.1 any breach, or potential breach, of the Anti-slavery Policy; or

1.7.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

1.8 If required by the Authority, the Contractor shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy.

2 EXTENSION

2.1 Subject to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2, the Authority shall be entitled to extend the Term on one or more occasions by giving the Contractor written notice not less than two (2) Months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. The provisions of the Contract will apply and take effect mutatis mutandis (subject to any Variation or adjustment to the Contract Price pursuant to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2) throughout any such extended period.

3 CONTRACT PRICE

3.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contractor the Contract Price in accordance with Clause 4 (Payment and VAT) of this Schedule 2. The Contract Price shall remain fixed for the Term.

3.2 The Authority shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

- 3.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Clause 14 (Recovery of Sums Due) of this Schedule 2.
- 3.4 The Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf) in respect of the Authority's obligation to accept unstructured electronic invoices from the Contractor where and as required under that procurement policy note (as amended from time to time).

4 PAYMENT AND VAT

- 4.1 Where the Contractor submits an invoice to the Authority in accordance with Clause 4.4 of this Schedule 2 the Authority will consider and verify that invoice in a timely fashion.
- 4.2 The Authority shall pay the Contractor any sums due under such invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 4.3 Where the Authority fails to comply with Clause 4.1 of this Schedule 2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2 after a reasonable time has passed.
- 4.4 The Contractor shall submit an invoice to the Authority Monthly in arrears. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice. Where travel and subsistence is claimed, all claims must comply with the provisions set out in the Schedule 6 and must be accompanied by appropriate receipts to cover the total amount claimed.
- 4.5 The Authority shall be entitled to withhold payment due under Clause 4 (Payment and VAT) of this Schedule 2 for so long as the Contractor, in the Authority's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 21.11 of this Schedule 2. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.

- 4.6 The Contractor shall add VAT to the Contract Price at the prevailing rate in accordance with applicable law.
- 4.7 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 4.7 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 4.8 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 23 (Termination on Default) of this Schedule 2 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.9 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under the Contract, the Contractor shall:
- 4.9.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 4.9.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Contractor or any Contractor Personnel.
- 4.10 In the event that any one of the Contractor Personnel is a Worker as defined in Clause 1 (Definitions) of Schedule 3 who receives consideration relating to the Services, then, in addition to its obligations under Clause 4.9 of this Schedule 2, the Contractor shall ensure that its contract with the Worker contains the following requirements:

- 4.10.1 that the Authority may, at any time during the Term, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 4.9 of this Schedule 2, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
- 4.10.2 that the Worker's contract may be terminated at the Authority's request if:
- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.10.1 of this Schedule 2; and/or
 - (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 4.9 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and
- 4.10.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

5 PRICE ADJUSTMENT ON EXTENSION OF TERM

- 5.1 The Contract Price shall apply for the Term. In the event that the Authority agrees to extend the Term pursuant to Clause 2 (Extension) of this Schedule 2 the Authority shall, in the six (6) Month period prior to the expiry of the Term or, as the case may be, in such other period as may be appropriate, enter into discussion, in good faith, with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation to the Contract Price.
- 5.2 If the Parties are unable to agree a variation to the Contract Price in accordance with Clause 5.1 of this Schedule 2, the Contract shall terminate at the end of the Term.
- 5.3 If a 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 any period of extension and shall apply during such period of extension.

5.4 Any increase in the Contract Price pursuant to Clause 5.1 of this Schedule 2 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index as may be specified in the Schedule 6 between the Services Commencement Date and the date six (6) Months before the end of the Term.

6 WARRANTIES AND REPRESENTATIONS

6.1 The Contractor warrants and undertakes to the Authority that:

6.1.1 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 perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

6.1.2 in entering the Contract it has not committed any Fraud;

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

6.1.4 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 the Contract;

6.1.5 it is not subject to any contractual obligation, compliance with which is likely to affect its ability to perform its obligations under the Contract;

6.1.6 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;

6.1.7 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;

6.1.8 in the three (3) years prior to the Commencement Date:

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

6.2 The Contractor warrants and undertakes to the Authority that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

6.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

6.2.2 promptly provide to the Authority:

- (a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

6.3 The Contractor warrants and undertakes to the Authority that:

6.3.1 its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and

6.3.2 neither the Contractor nor any of its Contractor Personnel:

- (a) has been has been convicted of any offence involving slavery and human trafficking; and
- (b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

6.3.3 it undertakes its business in a manner that is consistent with the Anti-slavery Policy.

6.4 The Contractor shall implement due diligence procedures for its own Contractors, Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

7 CHANGE CONTROL PROCESS

7.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender, as may be requested by the Authority from time to time.

7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

8 KEY PERSONNEL

8.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

8.2 The Contractor shall not remove or replace any Key Personnel unless:

8.2.1 requested to do so by the Authority;

8.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

8.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or

8.2.4 the Contractor obtains the Authority's prior written consent.

8.3 The Authority shall not unreasonably withhold its consent under Clause 8.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

9 CONTRACTOR PERSONNEL

9.1 At all times, the Contractor shall ensure that:

9.1.1 each of the Contractor Personnel responsible for providing the Services is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

9.1.2 there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;

9.1.3 only those people who are authorised by the Contractor are involved in providing the Services; and

9.1.4 all of the Contractor Personnel comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Premises of the Authority.

9.2 The Authority may refuse to grant access to and remove any of the Contractor Personnel who do not comply with Clause 9.1.4 of this Schedule 2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.

9.3 The Contractor shall replace any of the Contractor Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and the Services and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.
- 9.6 If the Contractor fails to comply with Clause 9.4 of this Schedule 2 within one (1) Month of the date of the request and, in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract with immediate effect by giving written notice to the Contractor at any time after the end of that one (1) Month period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with Clause 9.4 of this Schedule 2 shall be final and conclusive.

10 MANNER OF CARRYING OUT THE SERVICES

- 10.1 The Contractor shall begin performing the Services on the Services Commencement Date and continue to perform them for the Term. The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 10.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

10.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

10.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

11 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

11.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.

11.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Schedule 7 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

11.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.

11.4 At the Authority's request, within five (5) Working Days of such request, the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).

11.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.

11.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:

11.6.1 whether the Contractor believes the objectives of the Contract were achieved;

11.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 and that had been forecast in the Tender were achieved; and

11.6.3 to identify any lessons learnt for future projects.

11.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 11.6.1 to 11.6.3 of this Schedule 2 as it sees fit.

12 RIGHT OF AUDIT

12.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

12.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

12.3 For the purpose of:

12.3.1 the examination and certification of the Authority's accounts; or

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

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

13 PROPERTY

13.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. 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 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 Sub-contractors and 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.

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

13.3 Upon receipt of the Property the Contractor shall subject it to:

13.3.1 a reasonable visual inspection, and

13.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.

13.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.

13.5 The Contractor shall ensure the security of all the Property whilst in its possession.

13.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

14 RECOVERY OF SUMS DUE

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

15 CONFIDENTIAL INFORMATION

15.1 For the purposes of this Clause, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly Confidential Information.

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

15.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without the Disclosing Party's prior written consent;

15.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and

15.2.4 immediately notify the Disclosing Party if its suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

15.3 Clause 15.1 of this Schedule 2 shall not apply to the extent that:

15.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;

15.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;

15.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;

15.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

- 15.3.5 it is independently developed without access to the other Party's Confidential Information.
- 15.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 15.5 The Contractor may only disclose the Confidential Information of the Authority to the Contractor Personnel directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Confidential Information of the Authority received otherwise than for the purposes of the Contract and the provision of the Services.
- 15.7 At the written request of the Authority, the Contractor shall procure that Contractor Personnel identified in the Authority's request shall sign a confidentiality undertaking (in a form acceptable to the Authority) prior to commencing any work in accordance with the Contract.
- 15.8 The Authority may disclose the Confidential Information of the Contractor:
- 15.8.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 15.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 15.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 15.8.4 on a confidential basis to a professional adviser, consultant, Contractor or other person engaged by any of the entities described in Clause 15.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;

15.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or

15.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 15 (Confidential Information).

15.9 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Confidential Information of the Contractor is disclosed pursuant to Clause 15.3 of this Schedule 2 is made aware of the Authority's obligations of confidentiality.

15.10 Nothing in this Clause 15 (Confidential Information) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

15.11 Failure by the Contractor to comply with any of its obligations under this Clause 15 (Confidential Information) shall be an irremediable material breach of this Contract and the Authority shall be entitled to terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.

16 AUTHORITY DATA

16.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

16.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.

16.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format the Authority specifies.

- 16.4 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 16.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 16.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 16.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 16.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
 - 16.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 16.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

17 PROTECTION OF PERSONAL DATA

- 17.1 For the purposes of this Clause 17 (Protection of Personal Data), the terms "**Process**" and "**Processing**" shall have the meaning prescribed under the GDPR.
- 17.2 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under the Contract, the Parties acknowledge that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 17.3 The Contractor shall:

- 17.3.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to the Contractor during the Contract);
- 17.3.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 17.3.3 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;
- 17.3.4 take all reasonable steps to ensure the reliability of and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
- (a) are aware of and comply with the Contractor's duties under this Clause 17.3;
 - (b) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
 - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the GDPR);
- 17.3.5 not disclose or transfer the Personal Data to any third party, Contractor Personnel or Sub-contractor unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under the Contract);
- 17.3.6 notify the Authority within five (5) Working Days if it receives:

- (a) a request from a Data Subject (or a third party on their behalf) for access to that person's Personal Data;
 - (b) a complaint or request relating to the Authority's obligations under the Data Protection legislation; or
 - (c) 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.
- 17.3.7 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 17.3.6 of this Schedule 2), including by promptly providing:
- (a) the Authority with full details of the complaint, communication or request;
 - (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the complaint, communication or request within the relevant timescales set out in the GDPR;
 - (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
 - (d) any further information requested by the Authority;
- 17.3.8 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 12 (Right of Audit), the Contractor's data Processing activities (and/or those of its agents, and Sub-contractors) and comply with all reasonable requests or directions made by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 17.3.9 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and

- 17.3.10 not Process or otherwise transfer any Personal Data outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Authority.
- 17.4 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 17.5 The Contractor acknowledges that in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Personal Data that the Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Authority may proceed directly to court and seek injunctive relief or other equitable relief or prevent any further breach (or attempted or threatened breach).
- 17.6 In the event that through any failure by the Contractor to comply with its obligations under the Contract, Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Contractor shall be liable for the costs of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Contractor.
- 17.7 The provisions of this Clause 17 (Protection of Personal Data) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Allocation of title to IPR

- 18.1.1 Save as expressly granted elsewhere under this Contract:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely:
 - (i) the Contractor Background IPR; and
 - (ii) the Third Party IPR; and
- (b) the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
 - (i) Authority Background IPR;
 - (ii) Authority Data; and
 - (iii) Project Specific IPRs.

18.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 18.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

18.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

18.2 Assignments granted by the Contractor: Project Specific IPR

18.2.1 The Contractor hereby assigns to the Authority with full guarantee (or shall procure from the first owner the assignment to the Authority), title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 18.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.

18.2.2 The Contractor shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority.

18.2.3 To the extent that it is necessary to enable the Authority to obtain the full benefits of ownership of the Project Specific IPRs, the Contractor hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the

Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-licence and/or commercially exploit any Contractor Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR.

18.3 Licences granted by the Contractor: Contractor Background IPR

18.3.1 The Contractor hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Contractor Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.

18.3.2 At any time during the Term or following the Expiry Date, the Contractor may terminate a licence granted in respect of the Contractor Background IPR under Clause 18.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Authority Cause which constitutes a material breach of the terms of Clauses 18.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Contractor gives the Authority written notice specifying the breach and requiring its remedy.

18.3.3 In the event the licence of the Contractor Background IPR is terminated pursuant to Clause 18.3.2, the Authority shall:

- (a) immediately cease all use of the Contractor Background IPR;
- (b) at the discretion of the Contractor, return or destroy documents and other tangible materials that contain any of the Contractor Background IPR, provided that if the Contractor has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Contractor Background IPR; and
- (c) ensure, so far as reasonably practicable, that any Contractor Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing Contractor Background IPR.

18.4 Authority's right to sub-licence

18.4.1 The Authority may sub-licence:

- (a) the rights granted under Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) to a third party (including for the avoidance of doubt, any Replacement Contractor) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority; and
 - (ii) the sub-licence only authorises the third party to use the rights licenced in Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) to any Approved Sub-Licencee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Authority.

18.5 Authority's right to assign/novate licences

18.5.1 The Authority may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR) to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

18.5.2 Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body

shall not affect the validity of any licence granted in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR).

18.5.3 If a licence granted in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR) is novated under Clause 18.5.1 or there is a change of the Authority's status pursuant to Clause 18.5.2 (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

18.6 Third Party IPR

18.6.1 The Contractor shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) and Clause 18.5.1 (Authority's right to assign/novate licences). If the Contractor cannot obtain for the Authority a licence in accordance with the licence terms set out in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR) and Clause 18.5.1 (Authority's right to assign/novate licences) in respect of any such Third Party IPR, the Contractor shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Contractor could seek to use; and
- (b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

18.6.2 The Contractor shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than those on which such software is usually made available.

18.6.3 Without prejudice to any other right or remedy of the Authority, if the Contractor becomes aware at any time, including after termination, that any Intellectual Property Rights for which the Authority does not have a licence in accordance with Clause 18.2.3 subsist in the Project Specific IPR, then the Contractor must notify

the Authority within 10 days of what those rights are and which parts of the Project Specific IPR they are found in.

18.7 Licence granted by the Authority

18.7.1 The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPR, the Project Specific IPRs and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 15.7 (Confidentiality); and
- (b) the Contractor shall not without the prior written consent of the Authority use the licenced materials for any other purpose or for the benefit of any person other than the Authority.

18.7.2 In furtherance of Clause 18.7.1(b) the Contractor shall ensure that no publication of work connected with, or arising out of, the Services occurs without the express prior written consent of the Authority. If the Contractor or any employee or student of the Contractor wishes to make a Publication relating to the Services, the Contractor shall:

- (a) seek the prior written consent of the Authority; and
- (b) where the Authority has provided consent, at the Authority's request provide to the Authority a copy of the draft Publication at least 2 months before the proposed submission date (**Review Period**). The Authority shall review the Publication within the Review Period, and at the Authority's request, the Contractor shall remove any Confidential Information contained in the Publication and/or delay the Publication in accordance with the Authority's instructions (if any).

18.7.3 Where the Authority requires Confidential Information to be removed from a draft Publication, the Contractor shall provide to the Authority an amended version of the draft Publication at least 10 days before submission to enable the Authority to

review the draft Publication to ensure that the relevant Confidential Information has been removed.

18.8 Termination of licences

- 18.8.1 Subject to Clauses 18.3.2 and/or 18.3.3 (Licences granted by the Contractor: Contractor Background IPR), all licences granted pursuant to this Clause 18 (Intellectual Property Rights) (other than those granted pursuant to Clause 18.6 (Third Party IPR) and 18.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.
- 18.8.2 The Contractor shall, if requested by the Authority, grant (or procure the grant) to the Replacement Contractor of a licence to use any Contractor Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.
- 18.8.3 The licence granted pursuant to Clause 18.7.1 (Licence granted by the Authority) and any sub-licence granted by the Contractor in accordance with Clause 18.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Contractor shall:
- (a) immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Contractor containing such Authority Background IPR and/or Authority Data.

18.9 IPR Indemnity

18.9.1 The Contractor shall at during and after the Term, on written demand indemnify the Authority against all losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

18.9.2 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its own expense and sole option, either:

(a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other Services;

(iii) there is no additional cost to the Authority; and

(iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

18.9.3 If the Contractor elects to procure a licence in accordance with Clause 0 or to modify or replace an item pursuant to Clause 0, but this has not avoided or resolved the IPR Claim, then:

(a) the Authority may terminate this Contract by written notice with immediate effect; and

(b) without prejudice to the indemnity set out in Clause 18.9.1, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

19 LIABILITY

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

19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;

19.1.2 bribery or Fraud by it or its employees;

19.1.3 fraudulent misrepresentation; or

19.1.4 any liability to the extent that it cannot be excluded or limited by any applicable law.

19.2 Subject to Clauses 19.3, 19.5, 19.6 and 19.7 of this Schedule 2, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor Personnel 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.

19.3 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.

19.4 Subject always to Clauses 19.1, 19.2, 19.6 and 19.7 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the greater of:

19.5.1 **Information redacted in line with Section 43 of FOIA** ; or

19.5.2 one hundred and twenty five per cent (125%) of the total Contract Price paid or payable by the Authority to the Contractor for the Services.

- 19.5 Subject always to Clause 19.1, in no event shall either Party be liable to the other for any:
- 19.5.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
 - 19.5.2 loss of savings (whether anticipated or otherwise); and/or
 - 19.5.3 indirect or consequential loss or damage.
- 19.6 The Contractor shall not be able to exclude liability to the Authority for additional operational, administrative costs and/or expenses or wasted expenditure which the Authority incurs resulting from the direct Default of the Contractor.
- 19.7 The Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 19.7.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 19.7.2 any wasted expenditure or charges;
 - 19.7.3 the additional costs of procuring replacement Services for the remainder of the Term, which shall include any incremental costs associated with such replacement Services above those which would have been payable under the Contract;
 - 19.7.4 any compensation or interest paid to a third party by the Authority; and
 - 19.7.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 19.8 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 19.9 Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the

performance by the Contractor of any and all of its obligations under the Contract and in respect of any losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor.

19.12 Clause 19 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

20 INSURANCE

20.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

20.2 The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.

20.3 Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.

20.4 The Contractor shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Contractor pursuant to Clause 20 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

20.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

20.6 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 19 (Liability) of this Schedule 2.

21 TRANSFER AND SUB-CONTRACTING

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

21.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the Contract or any part thereof to:

21.2.1 any other body established by the Crown; or

21.2.2 under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

21.2.3 any private sector body which substantially performs the functions of the Authority,

and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 21.2.

21.3 A change in the legal status of the Authority shall not, subject to Clause 21.4 of this Schedule 2 affect the validity of the Contract and the Contract shall be binding on any successor body to the Authority.

21.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Contract to a private sector body in accordance with Clause 21.2.3 of this Schedule 2 (the "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 22 (Termination on Insolvency and Change of Control) of this Schedule 2 shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 22 (Termination on Insolvency and Change of Control) of this Schedule 2 were references to the Transferee).

21.5 The Contractor shall ensure that all Sub-contracts, which the Contractor intends to procure following the date of this Contract are advertised and awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-contract.

21.6 The Contractor shall exercise due skill and care in the selection of any Sub-contractors to ensure that the Contractor is able to:

- 21.6.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 21.6.2 comply with its obligations under the Contract in the provision of the Services;
and
 - 21.6.3 assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to the Contract.
- 21.7 Prior to sub-contacting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:
- 21.7.1 the proposed Sub-contractor's name, registered office and company registration number; and
 - 21.7.2 the scope of any Services to be provided by the proposed Sub-contractor.
- 21.8 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2, the Contractor shall also provide:
- 21.8.1 a copy of the proposed Sub-contract; and
 - 21.8.2 any further information reasonably requested by the Authority.
- 21.9 The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2 (or, if later, receipt of any further information requested pursuant to Clause 21.8 of this Schedule 2), object to the appointment of the relevant Sub-contractor if they consider that:
- 21.9.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under the Contract;
 - 21.9.2 the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
 - 21.9.3 the proposed Sub-contractor employs unfit persons; and/or

21.9.4 the proposed Sub-contractor should be excluded in accordance with Clause 21.14 of this Schedule 2,

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

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

21.10.1 the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2; and

21.10.2 any further information requested by the Authority pursuant to Clause 21.8 of this Schedule 2

the Contractor may proceed with the proposed appointment.

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

21.11.1 requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

21.11.2 that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 21.10.1 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 21.10.3 of this Schedule 2 after a reasonable time has passed;

requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

21.11.3 21.10.4 giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;

21.11.4 giving the Contractor a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law; and

21.11.5 requiring a Sub-contractor to advertise and award any of its own Sub-contracts to the same extent as required of the Contractor, as set out at Clause 21.5 and

21.11.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 21.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

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

21.13 Notwithstanding any provision of Clauses 15 (Confidential Information) and 30 (Publicity) of this Schedule 2 if the Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

21.14 Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 21, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

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

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

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

and the Contractor shall comply with such a requirement.

21 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

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

- 22.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 22.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Contractor be wound up or a resolution for the winding-up of the Contractor is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 22.1.3 a petition is presented for the winding-up of the Contractor (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Contractor pursuant to section 98 of the Insolvency Act 1986; or
- 22.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets; or
- 22.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within ten (10) Working Days;
- 22.1.6 an application is made in respect of the Contractor either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 22.1.7 if the Contractor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 22.1.8 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 22.1.9 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:
- (a) adversely impacts on the Contractor's ability to supply the Services in accordance with the Contract; or

- (b) could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services in accordance with the Contract; or
 - 22.1.10 the Contractor demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Contractor; or
 - 22.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Contractor comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 22.1.12 the Contractor being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - 22.1.13 the Contractor being an individual or any partner or partners in the Contractor who together are able to exercise control of the Contractor where the Contractor is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
 - 22.1.14 any event similar to those listed in Clauses 22.1.1 to 22.1.13 occurs under the law of any other jurisdiction.
- 22.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

22.2.1 being notified that a Change of Control has occurred or is planned or is in contemplation; or

22.2.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

23 TERMINATION ON DEFAULT

23.1 In the case of a breach of any of the terms of this Contract by the Contractor that is capable of remedy (including, without limitation any failure to pay any sums due under this Contract), the Authority shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Contractor the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Contractor ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 23.2 of this Schedule 2. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Contractor in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Contractor to:

23.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant default or breach within a period of ten (10) Working Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the Authority;

23.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

23.1.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 23.2.1(b) of this Schedule 2, a material breach of this Contract by the Contractor not remedied in accordance with an agreed Remedial Proposal.

23.2 The Authority may terminate the Contract, or terminate the provision of any part of the Services, with immediate effect by giving written notice to the Contractor if the Contractor:

23.2.1 commits a material breach of any of the terms of this Contract which is:

- (a) not capable of remedy; or
- (b) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or

23.2.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) Month rolling period whether or not the Contractor has remedied the breach in accordance with a Remedial Proposal. The twelve (12) Months rolling period is the twelve (12) Months immediately preceding the date of the third breach notice.

23.3 The Authority shall be entitled to terminate the Contract with immediate effect by giving written notice to the Contractor:

23.3.1 if the Contractor does not commence delivery of the Services by the Services Commencement Date, if any;

23.3.2 pursuant to and in accordance with the Key Provisions and Clauses 9.6, 15.11, 18.2.3, 26.4, 28.5, 31.2, 34.4 and 41.1 of this Schedule 2;

23.3.3 where the warranty given by the Contractor pursuant to Clause 6.2 of this Schedule 2 is materially untrue, the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 6.2 of this Schedule 2, or the Contractor fails to provide details of proposed mitigating factors as required by Clause 6.2 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or

23.3.4 if the Contractor commits a breach of the Anti-slavery Policy.

23.4 If the Authority fails to pay the Contractor undisputed sums of money after thirty (30) days of having received a valid invoice, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where

the failure to pay is due to the Authority exercising its rights under Clause 14 (Recovery of Sums Due) of this Schedule 2.

24 TERMINATION FOR BREACH OF THE REGULATIONS

24.1 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Regulations.

25 CONSEQUENCES OF EXPIRY OR EARLIER TERMINATION

25.1 Where the Authority terminates the Contract under Clause 23 (Termination on Default) of this Schedule 2 and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 23 (Termination on Default) of this Schedule 2, no further payments shall be made by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of arranging an alternative Contractor of the Services.

25.2 Save as otherwise expressly provided in the Contract:

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

25.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clauses 4 (Payment and VAT), 12 (Right of Audit), 14 (Recovery of Sums Due), 15 (Confidential Information), 17 (Protection of Personal Data), 18 (Intellectual Property Rights), 19 (Liability), 20 (Insurance), 25 (Consequences of Expiry or Termination), 27 (Recovery upon Termination), 29 (Waiver and Remedies Cumulative), 31 (Official Secrets Acts and Finance Act), 32 (Prevention of Fraud and Bribery), 39 (Freedom of Information Act) and 47 (Law and Jurisdiction).

26 DISRUPTION

- 26.1 The Contractor shall take reasonable care to ensure that, in the performance of its obligations under the Contract, it does not disrupt the operations of the Authority, its employees or any other contractor employed or engaged by the Authority.
- 26.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 26.3 In the event of industrial action by the Contractor Personnel, the Contractor shall prepare proposals for the continuation of its obligations under the Contract for the Authority to approve.
- 26.4 If the Contractor's proposals referred to in Clause 26.3 of this Schedule 2 are considered insufficient or unacceptable by the Authority, acting reasonably, then the Contract may be terminated with immediate effect by the Authority by written notice.
- 26.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

27 RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CONTRACT

- 27.1 Upon expiry or earlier termination (for any reason) of this Contract, the Contractor shall at the request of the Authority and at the Contractor's cost:
- 27.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted Contractors or Sub-contractors, which was obtained or produced in the course of providing the Services (but excluding copies of such Confidential Information, Personal Data or IP Materials that the Contractor is required to retain pursuant to the Law or for regulatory purposes);
- 27.1.2 except where the retention of Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Personal Data and provide written confirmation to the Authority that the data has been destroyed;

- 27.1.3 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under Clause 13 (Property) of this Schedule 2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 27.1.4 vacate and procure that the Contractor Personnel vacate any premises of the Authority occupied for the purposes of providing the Services;
 - 27.1.5 return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);
 - 27.1.6 comply with its obligations under any agreed exit plan; and
 - 27.1.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any Replacement Contractor to conduct due diligence.
- 27.2 If the Contractor fails to comply with Clause 27.1.1 and 27.1.2 of this Schedule 2, the Authority may recover possession of the items mentioned in those Clauses. The Contractor shall grant, and shall procure that any Sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Sub-contractors where any such items may be held.

28 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 28.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 23 (Termination on Default) of this Schedule 2.
- 28.2 Should the Authority be of the view, acting reasonably, that the Contractor can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.

28.3 Without prejudice to its right under Clause 14 (Recovery of Sums Due), 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.

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

28.5 In the event that:

28.5.1 the Contractor fails to comply with Clause 28.4 of this Schedule 2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

28.5.2 the Contractor persistently fails to comply with Clause 28.4 of this Schedule 2;

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

29 WAIVER AND CUMULATIVE REMEDIES

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

29.2 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 38 (Service of Notices and Communications) of this Schedule 2.

29.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

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

30 PUBLICITY

30.1 The Contractor shall not and shall procure that its Sub-contractors shall not:

30.1.1 make any press announcements or publicise the Contract in any way; or

30.1.2 use the Authority's name or brand in any promotion or marketing or announcement,

without the prior written consent of the Authority.

30.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

30.3 The provisions of this Clause 30 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

31 OFFICIAL SECRETS ACTS AND FINANCE ACT

31.1 The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:

31.1.1 the Official Secrets Acts 1911 to 1989; and

31.1.2 section 182 of the Finance Act 1989.

31.2 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor or any of the Contractor Personnel do not comply with Clause 31.1 of this Schedule 2.

32 PREVENTION OF FRAUD AND BRIBERY

32.1 The Contractor warrants and undertakes to the Authority that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:

32.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

32.2 The Contractor shall not during the Term:

32.2.1 commit a Prohibited Act; and/or

32.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

32.3 The Contractor shall during the Term:

32.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

32.3.2 keep appropriate records of its compliance with its obligations under Clause 32.3.1 of this Schedule 2 and make such records available to the Authority on request;

32.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause of all persons associated with the Contractor or its Sub-contractors who are responsible for supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence as the Authority may reasonably request; and

- 32.3.4 have, maintain and, where appropriate, enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 32.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 32.1 of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:
- 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 32.5 If the Contractor makes a notification to the Authority pursuant to Clause 32.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Right of Audit) of this Schedule 2.
- 32.6 If the Contractor breaches Clause 32.1 of this Schedule 2, the Authority may by notice:
- 32.6.1 require the Contractor to remove from the performance of the Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or
- 32.6.2 immediately terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.
- 32.7 Any notice served by the Authority under Clause 32.6 of this Schedule 2 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has

committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

33 NON-SOLICITATION

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

33.2 If either the Contractor or the Authority commits any breach of Clause 33.1 of this Schedule 2 the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

34 CONFLICT OF INTEREST

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

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

34.3 Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 34.3.

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

35 EQUALITY AND DIVERSITY

35.1 The Contractor shall:

35.1.1 perform its obligations under the Contract (including those in relation to provision of the Services) in accordance with:

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

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

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

35.3 The Contractor shall take all reasonable steps (at its own expense) to secure the observance of Clause 35.1 of this Schedule 2 by all of its servants, employees or agents of the Contractor engaged in performance of the Contract and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Contractor by Clause 35.1 of this Schedule 2.

- 35.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Contractor, its agents, employees or Sub-contractors.
- 35.5 The Contractor shall (and shall use its reasonable endeavours to procure that the Contractor Personnel shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 35.6 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 35.7 Subject to Clause 19 (Liability) of this Schedule 2, the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Clause 35 (Equality and Diversity).

36 HEALTH AND SAFETY

- 36.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Contractor Personnel in the performance of the Services.
- 36.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 36.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises of the Authority and which may affect the Contractor in the performance of the Services.
- 36.4 The Contractor shall inform all Contractor Personnel engaged in the provision of Services at the Premises of the Authority of all known health and safety hazards and shall instruct those Contractor Personnel in connection with any necessary safety measures.

36.5 Whilst on the Premises of the Authority, the Contractor shall comply, and shall procure that the Contractor Personnel comply, with any health and safety measures implemented by the Authority in respect of persons working on those Premises.

36.6 The Contractor shall notify the Authority Representative immediately in the event of any incident occurring in the performance of the Services on the Premises of the Authority where that incident causes any personal injury or any damage to property which could give rise to personal injury.

36.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

37 RELATIONSHIP OF THE PARTIES

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

38 SERVICE OF NOTICES AND COMMUNICATIONS

38.1 Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

38.2 A notice shall be treated as having been received:

38.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or

38.2.2 if sent by first class recorded delivery mail on a normal Working Day, at 9.00 am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00 am on the third Working Day subsequent to the day of posting; or

38.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

39 TRANSPARENCY AND FREEDOM OF INFORMATION ACT

39.1 The Parties acknowledge that

35.3.1 the Transparency Reports; and

35.3.2 the content of this Contract, including any changes to the Contract agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
- (b) Commercially Sensitive Information;

(together the "**Transparency Information**") are not Confidential Information.

39.2 Notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).

39.3 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 13 (Transparency Reports).

39.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.

- 39.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 39.6 The Contractor agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 18.4.7(c) and Open Book Data) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 39.7 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
- 39.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority, at the Contractor's expense, to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
- 39.7.2 transfer to the Authority all requests for information that it receives under the FOIA and the Environmental Information Regulations ("**Requests for Information**") relating to the Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- 39.7.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Contractor's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 39.7.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 39.8 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The

Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.

39.9 The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 12 (Right of Audit) of this Schedule 2 and shall permit the Authority to inspect such records as the Authority requests from time to time.

39.10 The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 14 (Right of Audit) of this Schedule 2.

40 FORCE MAJEURE

40.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by giving written notice.

40.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or Contractor shall be regarded as due to Force Majeure only if that agent, Sub-contractor 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 of this Schedule 2 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 DISPUTE RESOLUTION

- 41.1 The Authority and the Contractor shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either notifying the other party of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.
- 41.2 Nothing in this dispute resolution procedure shall prevent the Authority or the Contractor from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 41.3 If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 41.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 46.5 of this Schedule 2 unless:
- 42.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
- 42.3.2 the Contractor does not agree to mediation.
- 42.4 The obligations of the Authority and the Contractor under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.
- 42.5 The procedure for mediation is as follows:
- 42.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Authority and the Contractor or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
- 42.5.2 the Authority and the Contractor shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be

adopted for negotiations to be held. If considered appropriate, the Authority and the Contractor may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

42.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

42.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

42.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

42.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

42 SEVERABILITY

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

43 ENTIRE AGREEMENT

43.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral,

except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

44 FURTHER ASSURANCES

44.1 Each Party undertakes at the request of the other, and at the cost of the requesting party, to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

45 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

45.1 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

46 LAW AND JURISDICTION

47.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

47.2 Subject to Clause 42 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

Schedule 3 - Definitions and Interpretation

1 Definitions

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

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

"Approved Sub-Licencee" means any of the following:

- a) a Central Government Body;
- b) any third party providing goods and/or services to a Central Government Body; and/or
- c) a body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;

"Authority" means the Secretary of State for Health acting as part of the Crown;

"Authority Background IPR" means:

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

"Authority Cause" means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees,

servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Contractor;

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

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

any Personal Data for which the Authority is the Data Controller;

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

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

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

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

"Commencement Date" means the date of this Contract;

"Commercially Sensitive Information" means the information listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has

indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

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

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 15 (Confidential Information));
- (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

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

"Contractor Background IPR" means

- a) Intellectual Property Rights owned by the Contractor before the Commencement Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or
- b) Intellectual Property Rights created by the Contractor independently of this Contract;

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

Contract but before taking into account the effect of any adjustment of price in accordance with Clause 5 (Price Adjustment on Extension of Term);

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Regulations;

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

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

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

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

"Data Controller" shall have the meaning given in the GDPR;

"Data Processor" shall have the meaning given in the GDPR;

"Data Protection Legislation" means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;

"Data Subject" shall have the meaning given in the GDPR;

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

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

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

“DOTAS” if applicable means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under 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;

“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;

“Exit Plan” means the plan for the provisions of the Transitional Assistance Services in the event of the expiry or termination of the Contract, which is to be developed by the Parties pursuant to Clause 15 of Schedule 1;

“Expiry Date” means the date upon which the Contract shall end as specified in the Key Provisions;

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

“Force Majeure” any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including 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 but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractor’s supply chain;

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

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

“General Anti-Abuse Rule” if applicable, means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

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

“Impact Assessment” has the meaning given to it in Clause 10.4 of Schedule 1;

“Implementation Plan” means the implementation plan, if any, referred to in the Key Provisions;

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

"Intellectual Property Rights" or **"IPR"** means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, know-how, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licenced by the Contractor (or to which the Contractor has provided access) to the Authority in the fulfilment of its obligations under this Contract;

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

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

"Month" means calendar month;

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

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

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

"Party" means a party to the Contract;

"Personal Data" shall have the meaning as set out in the GDPR;

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

"Prohibited Act" means:

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

(iii) at common level concerning Fraud; or

(iv) committing (or attempting or conspiring to commit) Fraud;

“Project Specific IPR” means IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract;

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract;

“Publication” means the publication of an abstract, article or paper in a journal or an electronic repository, or its presentation at a conference or seminar;

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

“Regulations” means the Public Contracts Regulations 2015 as amended from time to time;

“Regulatory Bodies” means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract and **“Regulatory Body”** shall be construed accordingly;

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

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

“Relevant Transfer” shall have the meaning ascribed in Schedule 10 (Staff Transfer);

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

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

"Security Policy" means the HMG Security Policy Framework (April 2014) available at <https://www.gov.uk/government/publications/security-policy-framework>, as amended by notification to the Contractor from time to time;

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

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

"Step In Rights" means the step in rights, if any, referred to in the Key Provisions;

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

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

"Tender" means the tender submitted by the Contractor to the Authority and annexed to Schedule 5 (Tender);

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

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

"Termination Period" means the period specified in the Termination Notice during which period the Authority may require the Contractor to continue to provide the

Services after a Termination Notice has been given provided always that such period may not extend the Term (as extended by Clause 2 (Extension) of Schedule 2 by more than [six (6)] Months;

"Third Party IPR" means Intellectual Property Rights owned by a third party which is or will be used by the Contractor for the purpose of providing the Services;

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

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

"Transitional Assistance Service Charges" means the charges, if any, payable by the Authority to the Contractor for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 6;

"Transitional Assistance Services" means the services to be provided by the Contractor to the Authority pursuant to Clause 15 of Schedule 1 in order to facilitate the transfer of the Services to the Authority or a Replacement Contractor;

"Variation" has the meaning given to it in Clause 10.2 of Schedule 1;

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

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

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

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

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

- 1.2.1 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
 - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
 - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 Where there is any conflict between the Tender (being set out at Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.4 In entering into this Contract the Authority is acting as part of the Crown.

Schedule 4 – Specification

1. INTRODUCTION

- 1.1 Following completion of the Junior Doctors contract negotiations in 2016, Jeremy Hunt, the Secretary of State for Health, announced that he wished 'to commission an independent report on how to reduce and eliminate the gender pay gap in the medical profession'. The Gender Pay Gap was a key aspect of the Junior Doctors dispute, with members of the medical community expressing concern at the training structure within the NHS and concerns around the recognition of caring responsibilities.
- 1.2 Over half of those entering the medical workforce are women, and working patterns are changing. The Junior Doctors dispute, plus these continuing changes in the profile of the NHS workforce, makes this a crucial point for a review on this scale.
- 1.3 The timing of the review coincides with the recent introduction of mandatory gender pay gap reporting across public, private and voluntary sectors – a government manifesto commitment to eradicate the gender pay gap for future generations.
- 1.4 Although the proposed review is initially aimed at the medical profession, including GPs and those working in GP practices, it is anticipated that the findings will have relevance across the wider NHS workforce. We expect that the review findings will feed into future contract negotiations as well as providing robust evidence for the Pay Review Bodies.

2. PURPOSE

- 2.1 The overarching aims of the review are to identify the causes of the gender pay gap in medicine through the interrogation of datasets, along with the development of qualitative evidence identifying the impact of cultural, practical and psychological issues contributing to the gender pay gap in the medical profession. The evidence should consider Junior Doctors, GPs, Consultants, SAS doctors, public health doctors, and medical academics. Using the quantitative and qualitative evidence obtained throughout the review process, a series of implementable recommendations for publication must be developed.

3. SCOPE OF REQUIREMENTS

- 3.1 The reviewer would be expected to look at the following areas:
 - Gaps in earnings between men and women within different specialties and at various stages of their careers,
 - Gender differences in basic pay, on-call allowances, locum work, clinical excellence awards, discretionary, distinction awards and other additional payments;
 - Gender differences in rates of progression and access to additional earning opportunities such as access to private practice or career development opportunities including academic research for example;

- Gender differences in hours worked (rostered and actual) a gender breakdown of Less Than Full Time (LTFT) compared to those doctors who are Full Time (FT), plus a detailed breakdown of LTFT doctors by specialty and length of time spent as an LTFT doctor;
- The impact of caring responsibilities on women's and men's earnings, progression and career pathways, including the accessibility of formal and informal childcare for out of hours work;
- An analysis of lifetime gender pay differences and the gender pensions gap;
- Identification and analysis of age gap issue and the implications on the gender pay gap. Evidence suggests that for women under 20 there is a negative difference in pay rates, and likewise of women over the age of 40.
- Consideration of current initiatives such as the GP retention work and the flexible training work led by HEE.
- Differences between the earnings, and access to additional earnings, for partners in general practice, and salaried GPs.

3.2 In terms of quantitative evidence, the interrogation of datasets provided by NHS Digital/DHSC will provide a high level of information to start developing conclusions but this must be supported by qualitative evidence that details the drivers of the gap and impact on staff. Qualitative evidence can be gathered using methods deemed appropriate by the reviewer but must include focus groups consisting of representatives from across medicine. Subject areas should include the following:

- Working patterns and their impact on those in the medical profession;
- Impact of parenthood on careers;
- Care arrangements and their affordability, and issues around being a carer;
- Access to flexible working;
- The experience of those professions working with and within the NHS including SAS doctors, medical academics and public health doctors;
- Staff expectations and desires for what their employers and the profession as a whole should deliver;
- The predominance of men in senior roles;
- Gendered education and career choices;
- Shared parental leave, identify factors that are resulting in a slow uptake and whether a change in the delivery method could make a difference;
- The cultural, psychological and practical elements that affect progression in medicine, and their subsequent impact on gender pay;

- Factors affecting career progression and development;
- Impact of CEAs and impact of CEA application method on different groups;
- Variation across different specialities;
- Geographical issues;
- Career breaks.

3.3 Due to the breadth and complexity of the issues surrounding the gender pay gap, other issues will emerge that we would expect the reviewer to identify and report on. This should include the broader issues around the cultural, psychological and practical elements that make progression in medicine problematic. Other areas for consideration include predominance of men in senior roles, gendered education and career choices, and labour market divides.

3.4 Combined with quantitative data from NHS Digital (commissioned separately), the qualitative evidence developed by the reviewer through survey and focus group work will enable a robust examination of the extent of gender pay gap in medicine and identify the reasons behind it. The combination of both qualitative and quantitative evidence will support the development of a series of implementable recommendations

3.5 A steering group will be established and comprise of representatives from DHSC, BMA, NHS Employers and other stakeholders. The process of identifying a chair is currently underway and will be confirmed by Ministers once suitable candidates have been identified and shortlisted. The reviewer will work alongside the Chair and steering group and with their input go on to make any recommendations to government, based on the review's findings.

4 REVIEWER REQUIREMENTS:

4.1 The reviewer will have extensive knowledge on the subject of the gender pay gap in public sector, as well as a strong academic background, coupled with experience in conducting reviews of this kind. An understanding of the intricacies of the NHS pay system and how the medical workforce is structured is also a requirement.

4.2 The reviewer must have the ability to thoroughly analyse the data, to produce both quantitative and qualitative evidence, to engage with a wide range of doctors and representative organisations and to be able to make, with the assistance of a steering group, recommendations to resolve some of the issues raised through the review. In line with the wishes of our stakeholders, we would encourage the reviewer to seek a public call for action at the outset of the review. This will give stakeholders the opportunity to

submit their own experiences. The reviewer will determine the approach in terms of the methodology.

The reviewer must possess:

- Extensive knowledge on the subject of the gender pay gap in the public sector;
- A strong academic background with proven record in research;
- Experience in conducting reviews of a similar nature and developing implementable and relevant recommendations;
- Experience in defining their own project methodologies;
- An understanding of the intricacies of the NHS pay system and how the medical workforce is structured;
- The capability to thoroughly analyse the data and produce both quantitative and qualitative evidence
- The ability to engage with a wide range of doctors and representative organisations

5 DELIVERABLES

- Write a literature review, considering previous gender pay gap research, particularly in the medical workforce, to inform methodology of this review
- Regular contact with Chair and attendance and input into the Steering Group meeting
- Work closely with DHSC on the development of focus groups to assist with the review.

6 OUTPUT

- 6.1 The output for this research project should be a review that pulls together all the quantitative and qualitative evidence and draws conclusions. It is essential that the underlying research is sufficiently robust so that its conclusions can form the basis of recommendations for government.
- 6.2 Recommendations will be made with direction from and close collaboration with the chair and steering group. The chair and steering group will lead this aspect of the work, and the reviewer will include these recommendations in their review
- 6.3 The review must be of a quality to be used in discussions with external stakeholders and scrutinised by the media, NHS and other interested parties. The conclusion of the review will form the evidence base for any recommendations, and should be clear and enable the development of future policy proposals.
- 6.4 The reviewer is expected to share their proposed methodology and plans to take the review forward at a stakeholder event on commencement of the review. A second stakeholder event will be held towards the end of the review where the initial findings and recommendations will be shared.

7 ROLE OF THE DEPARTMENT OF HEALTH AND SOCIAL CARE

- 7.1 The review itself will entail considerable stakeholder engagement and DHSC will provide the secretariat support required. DHSC will provide support in the arrangement of focus groups, should the reviewer wish to use such groups as a mechanism for obtaining evidence. DHSC will work closely with both the chair and the reviewer to establish and run focus groups, or whatever is deemed appropriate.

8 ROLE OF CHAIR AND RELATIONSHIP

- 8.1 DHSC is in the process of finalising the appointment of a chair. This role will be to provide oversight of the review and to determine progress against objectives. The chair will be responsible for the steering groups.
- 8.2 The reviewer should be in regular contact with the chair to determine progress against objectives.

9 ADDITIONAL REQUIREMENTS

- 9.1 All invoices and credit notes for the Department shall be sent to directly to Accounts Payable (AP) quoting a valid Purchase Order number (PO).

Department of Health Accounts Payable

Information Redacted in line with Section 40 of the FOIA

4 LOCATION

- 4.1 Due to the nature of the requirement there will be a need to travel to various geographical locations within England. Majority of stakeholders are based in London and travel will be expected to attend some stakeholder meetings in this location.

5 BUDGET

- 5.1 The maximum budget for this requirement is £117,800 excluding VAT. Please note, if a Potential Provider's tendered price exceeds this budget, they will be deemed non-complaint and therefore excluded from the Procurement.
- 5.2 Prices should be inclusive of expenses and exclusive of VAT.

6 DURATION

- 12.1 The Secretary of State for Health would like to see the review completed by the end of December 2018; a period of 7 months from commencement of the review.

Schedule 5 – Tender

Tender Submission

Information Redacted in line with Section 40 and section 43 of the FOIA

Schedule 6 - Pricing

Information Redacted in line with Section 43 of the FOIA

Schedule 7 - Contract monitoring

Contract Monitoring to be agreed with Contractor and DHSC Project Lead **Information Redacted**
in line with Section 40 of the FOIA.

Delivery of review as set out in Contractors Award Questionnaire response AQ3 Methodology.

Schedule 8 - Commercially sensitive information

Schedule 9 - Variation Form

No of Contract being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("the **Authority**")

and

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

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

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

Schedule 10 - Staff Transfer

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Admission Contract"	the agreement to be entered into by which the Contractor agrees to participate in the Schemes as amended from time to time;
"Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;
"Contractor's Final Contractor Personnel List"	a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
"Contractor's Provisional Contractor Personnel List"	a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
"Fair Deal Employees"	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date

become entitled to the protection of New Fair Deal;

"Former Contractor"

a Contractor supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor);

"New Fair Deal"

the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;

"Notified Sub-contractor"

a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;

"Replacement Sub-contractor"

a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such subcontractor);

"Relevant Transfer"

a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date"

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"Schemes"

the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution

Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Contractor by the Minister for the Cabinet Office);

“Service Transfer”

any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Subcontractor to a Replacement Contractor or a Replacement Sub-contractor;

“Service Transfer Date”

the date of a Service Transfer;

“Staffing Information”

in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the GDPR), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical

insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;

**"Transferring Authority
Employees"**

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Contractor
Employees"**

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

**"Transferring Contractor
Employees"**

those employees of the Contractor and/or the Contractor's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

PART A
Transferring Authority Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Authority and the Contractor agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Contractor and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Authority occurring before the Relevant Transfer Date;

- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be

liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with Regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Subcontractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Contractor or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority; and
- (b) the Authority may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Contractor and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved, the Contractor and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or procures that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Authority within six (6) Months of the Services Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 CONTRACTOR INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Contractor or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Contractor or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Contractor or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Contractor or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and

(h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to their obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under Regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Contractor.

4 INFORMATION

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under Regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Contractor of employees whose

employment begins after the Relevant Transfer Date, and the Contractor undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

- 5.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Contracts and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Process.

6 PENSIONS

The Contractor shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A PENSIONS

1 PARTICIPATION

- 1.1 The Contractor undertakes to enter into the Admission Contract.
- 1.2 The Contractor and the Authority undertake to do all such things and execute any documents (including the Admission Contract) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees.

- 1.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes.

2 FUTURE SERVICE BENEFITS

- 2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Contract and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Contractor and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Contract, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Contractor shall comply with the requirements of [Part 1 of] the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 SUBSEQUENT TRANSFERS

The Contractor shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or the Authority may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either:

- (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or

- (ii) after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Contract.

PART B

Transferring Former Contractor Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Authority and the Contractor agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of Regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or Notified Sub-contractor and each such Transferring Former Contractor Employee.

1.2 The Authority shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the Authority shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

2 FORMER CONTRACTOR INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Contractor arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Subcontractor as

appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (f) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with Regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Contractor and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Contractor; and
- (b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable

steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the Authority, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved, the Contractor and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Contractor, within six (6) Months of the Services Commencement Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 CONTRACTOR INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Authority and/or the Former Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

(a) any act or omission by the Contractor or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Contractor or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under Regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

4 INFORMATION

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Contractor, in writing such information as is necessary to enable the Authority and/or the Former Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in

writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Contractor Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Process.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

The Contractor shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Contractor Employees who transfer from the Former Contractor to the Contractor.

ANNEX TO PART B
PENSIONS

1 PARTICIPATION

- 1.1 The Contractor undertakes to enter into the Admission Agreement.
- 1.2 The Contractor and the Authority:
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees;
 - (b) agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Contractor breaches the Admission Agreement; and
 - (c) agree that notwithstanding sub-paragraph (b) the Contractor shall notify the Authority in the event that it breaches the Admission Agreement.
- 1.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes.

2 FUTURE SERVICE BENEFITS

- 2.1 If the Contractor is rejoining the Schemes for the first time, the Contractor shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 2.3 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

4 PROVISION OF INFORMATION

- 4.1 The Contractor and the Authority respectively undertake to each other:
- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
 - (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant

Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Contractor shall comply with the requirements of [Part 1 of] the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 SUBSEQUENT TRANSFERS

The Contractor shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or the Authority may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either:
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

No transfer of employees at commencement of Services

1 PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.

1.1 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and

(b) the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

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

2 INDEMNITIES

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (a) shall not apply to:

- (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six (6) Months of the Services Commencement Date.

3 PROCUREMENT OBLIGATIONS

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

PART D

Employment exit provisions

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Contractor agrees that within twenty (20) Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination of this Contract;
 - (c) the date which is twelve (12) Months before the end of the Term; and
 - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),
- it shall provide in a suitably anonymised format so as to comply with the GDPR, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:
- (a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
 - (b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).
- 1.2 The Authority shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.

1.3 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.4 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

- 1.5 During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- (a) the numbers of employees engaged in providing the Services;
 - (b) the percentage of time spent by each employee engaged in providing the Services; and
 - (c) a description of the nature of the work undertaken by each employee by location.
- 1.6 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- (a) the most recent Month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

- (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Authority and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with Regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and

- (b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolvedthe Authority shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
 - (a) shall not apply to:
 - (i) any claim for:
 - (ii) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (iii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or
 - (iv) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six (6) Months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
 - (a) the Contractor and/or any Sub-contractor; and
 - (b) the Replacement Contractor and/or the Replacement Sub-contractor.

- 2.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;
 - (b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX: LIST OF NOTIFIED SUB- CONTRACTORS

Schedule 11 - Key Personnel

Key Role	Name of Key Personnel	Responsibilities / Authorities	Minimum period in Key Role
	Information Redacted in line with Section 40 of FOIA		Duration of Contract
	Information Redacted in line with Section 40 of FOIA		Duration of Contract
	Information Redacted in line with Section 40 of FOIA		Duration of Contract
	Information Redacted in line with Section 40 of FOIA		Duration of Contract
	Information Redacted in line with Section 40 of FOIA		Duration of Contract
	Information Redacted in line with Section 40 of FOIA		Duration of Contract

Schedule 12- Exit plan and service transfer arrangements

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Registers"	means the registers and database referred to in Paragraph 4.2.1 and Paragraph 4.2.2 of this Schedule 12;
"Transitional Assistance Notice"	has the meaning set out in Paragraph 5.1 of this Schedule 12;
"Transitional Period"	has the meaning set out in Paragraph 5.1.3 of this Schedule 12.

2 PURPOSE OF SCHEDULE

- 2.1 The Contractor is required to ensure the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination (including partial termination) or expiry of this Contract. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 2.2 For the avoidance of doubt the Contractor is responsible for the overall management of the exit and Service transfer arrangements.

3 EXIT

- 3.1 The Exit Plan shall:
- 3.1.1 address each of the issues set out in this Schedule 12 to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;

- 3.1.2 detail how the Services will transfer to the Replacement Contractor and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Contractor or any of its Sub-contractors (where applicable);
- 3.1.3 specify the scope of the Transitional Assistance Services that may be required by the Authority, any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
- 3.1.4 provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
- 3.1.5 set out the management structure to be put in place and employed during the Termination Period.

4 OBLIGATIONS DURING THE TERM

- 4.1 The Contractor and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within six (6) Months after the Commencement Date. The Contractor's exit manager shall be responsible for ensuring that the Contractor and its employees, agents and Sub-contractors comply with this Schedule. The Contractor shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with this Paragraph 4.1. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 12 and each Party's compliance with it.
- 4.2 During the Term, the Contractor shall:
 - 4.2.1 create and maintain a register of:
 - 4.2.1.1 all assets, detailing their ownership status; and
 - 4.2.1.2 all Sub-contracts and other agreements required to perform the Services;
 - 4.2.2 create and maintain a database setting out the Contractor's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Contractor and/or the Authority to acquire

sufficient technical understanding of how the Contractor provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and

- 4.2.3 at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.
- 4.3 The Parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.
- 4.4 At the same time as the Contractor submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.
- 4.5 On reasonable notice, the Contractor shall provide to the Authority and/or to its Replacement Contractor (subject to the Replacement Contractor entering into reasonable written confidentiality undertakings with the Contractor), such material and information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence.

5 TRANSITIONAL ASSISTANCE SERVICES

- 5.1 The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Contractor a notice to that effect (**Transitional Assistance Notice**) at any time prior to termination or expiry. The Transitional Assistance Notice shall specify:
- 5.1.1 the date from which Transitional Assistance Services are required;
- 5.1.2 the nature and extent of the Transitional Assistance Services required; and
- 5.1.3 the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no longer than 2 months after the date that the Contractor ceases to provide the Services or, in the event that a Termination Period is specified by the Authority, no longer than the end of the Termination Period).
- 5.2 The Authority shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Contractor provided that such extension shall not extend beyond 1 month after the expiry of the period referred to in Paragraph 5.1.3 of this Schedule 12.

- 5.3 The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than twenty (20) days' notice upon the Contractor to such effect.
- 5.4 The Transitional Assistance Services shall be provided in good faith and in accordance with Good Industry Practice.
- 5.5 During the Transitional Period, the Contractor shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Contractor shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Contractor in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 6 and subject to agreement under the Change Control Process.
- 5.6 The Authority and the Contractor acknowledge that the transition of the Services to the Replacement Contractor may be phased over a period of time so that certain identified Services are transferred to the Replacement Contractor before others.
- 5.7 The Authority shall, at the Contractor's reasonable request, require the Replacement Contractor and any agent or personnel of the Replacement Contractor, to enter into an appropriate confidentiality undertaking with the Contractor.
- 5.8 The Contractor shall comply with all of its obligations contained in the Exit Plan.
- 5.9 From the date six (6) Months before expiry or from the service by either Party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Contractor shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.10 The Contractor shall comply with all of its obligations regarding its personnel in accordance with Clause 6 of Schedule 1 and Schedule 10.

5.11 Upon termination or expiry (as the case may be) or upon expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Contractor to provide the Services or the Transitional Assistance Services at any time during the Termination Period (as the Authority shall require):

5.11.1 the Contractor shall cease to use the Authority Data and, at the direction of the Authority either:

5.11.1.1 provide the Authority or Replacement Contractor with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority); or

5.11.1.2 destroy (including removal from any hard disk) or return (at the Authority's option) all copies of the Authority Data not required to be retained by the Contractor for statutory compliance purposes and confirm in writing that such destruction has taken place;

5.11.2 the Contractor shall erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Period any software containing the Intellectual Property Rights owned by the Authority;

5.11.3 the Contractor shall return to the Authority such of the following as are in the Contractor's possession or control:

5.11.3.1 all materials created by the Contractor under this Contract, the Intellectual Property Rights in which are owned by the Authority;

5.11.3.2 any other equipment which belongs to the Authority; and

5.11.3.3 any items that have been on-charged to the Authority, such as consumables;

5.11.4 the Contractor shall vacate any Authority's Premises; and

5.11.5 each Party shall return to the other Party all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information.

- 5.12 The Transitional Assistance Services to be provided by the Contractor shall include (without limitation) such of the following services as the Authority may specify:
- 5.12.1 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority or Replacement Contractor after the end of the Termination Period;
 - 5.12.2 providing details of work volumes and staffing requirements over the preceding twelve (12) Months;
 - 5.12.3 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;
 - 5.12.4 transferring all training material and providing appropriate training to those Authority and/or Replacement Contractor staff responsible for internal training in connection with the provision of the Services;
 - 5.12.5 providing for transfer to the Authority and/or the Replacement Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - 5.12.6 answering all reasonable questions from the Authority and/or the Replacement Contractor regarding the Services.

Schedule 13 – Transparency Reports

GENERAL

- 1.1 Within three (3) months of the Commencement Date or the date so specified by the Authority the Contractor shall provide to the Authority for approval (such approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 of this Schedule 13 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Contractor, the Contractor shall submit a revised version of the relevant report for approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Contractor shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 13 below.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements in this Schedule 13 are in addition to any other reporting requirements in this Contract.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

NOT USED

Title	Content	Format	Frequency