
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:

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- 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:

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- 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.
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- 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:

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- 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;

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- 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

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- (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;

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- 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.

Declaration for Invitation to Tender – National Support for Enforcing Tobacco Control Legislation.

1.1 Having examined the proposed Contract comprising of:

Invitation to Tender – Attachment 3 (Service Description)

Invitation to Tender – Attachment 4 (Conditions of Contract for Provision of Services);

Invitation to Tender – Attachment 6 (Participation Requirements & Selection Questionnaire)

Invitation to Tender – Attachment 7 (Award Questionnaire)

Invitation to Tender – Attachment 6 (Pricing Matrix)

as enclosed in the ITT response dated 19 July 2018. We do hereby tender against the requirements, and terms and conditions of the proposed Contract.

1.2 We undertake to keep the tender open for acceptance by the Authority for a period of one hundred and twenty (120) days] from the deadline for receipt of tenders.

1.3 We declare that this is a bona fide tender, intended to be genuinely competitive, and that we have not fixed or adjusted the amount of the tender by, or under, or in accordance with, any agreement or arrangement with any other person. We further declare that we have not done, and we undertake that we will not do, any of the following acts prior to award of this Contract:

1.3.1 Collude with any third party to fix the price of any number of tenders for this Contract;

1.3.2 Offer, pay, or agree to pay any sum of money or consideration directly or indirectly to any person for doing, having done, or promising to be done, any act or thing of the sort described herein and above.

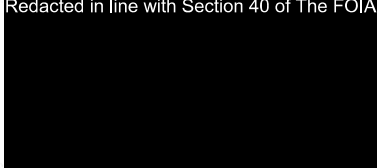
1.4 We agree that the Authority may disclose the Contractor's information/documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes.

1.5 Unless and until the Potential Provider and the Authority have executed a formal agreement, the Authority's acceptance of this tender with all its enclosures shall not constitute a binding contract between us. We understand that you are not bound to accept the lowest price, or any, tender.

Name of person duly authorised to sign tenders:

Date: 19 July 2018

Signed:

Redacted in line with Section 40 of The FOIA


In the capacity of: Redacted in line with Section 40 of The FOIA

duly authorised to sign tenders for and on behalf of: The Chartered Trading Standards Institute

By completing this Declaration and submitting your tender, you have agreed that the statements in this Form of Tender are correct.

Schedule 6 – Pricing

Redacted in line with Section 43 of The FOIA

Redacted in line with Section 43 of The FOIA

Redacted in line with Section 43 of The FOIA

TOTAL CONTRACT PRICE FOR ALL ITEMS	£100,000.00	£120,000.00	£120,000.00	£120,000.00	£120,000.00	£120,000.00

Assumptions

ESSENTIAL OBJECTIVES

The work is provided on a fixed price basis for all elements within the 3 yearly budget years under the Section 1 clauses. Each financial year will be monthly invoiced on a pro-rata basis across 6-month invoices for the first year, and then 12 months pro-rata for the 2 and 3 years for the full year.
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TOBACCO CONTROL ASSESSMENT

The Tobacco Control survey will be limited to a maximum size of 70 individual questions. A maximum of 15 question to be changed from the previous survey. The survey is on a fixed price basis.

PROJECTS

Each actual project will be scoped and agreed with the DHSC and delivered as fixed-price projects. The size and number of projects in any financial period will be determined by DHSC

Schedule 7 - Contract monitoring

Key performance indicators that DHSC will use to measure the success of the contract will include:

- Provision of accurate and appropriate advice to, and handling enquiries from, tobacco regulatory enforcement officers at local and regional levels throughout England through nationwide networks - throughout the contract period;
- Provision of regular reports of activities to gather intelligence, monitor and review regulatory enforcement issues at a local level, highlighting problematic or emerging issues to DHSC on a monthly basis to inform DHSC policy-making and action.
- Provision of quarterly updates regarding engagement with Local Authority regions; providing details of emerging issues and challenges and proposed solutions.
 - Provide regular updates on ad hoc issues to address emerging challenges around tobacco control
- Development, design and delivery of an annual Tobacco Control Survey to specification.
- DHSC retains the right to increase or reduce the frequency of meeting and/or reports in line with business requirements, in agreement with the provider.

Specific minimum key performance indicators (KPIs)

- Monitor the quality of the service provision to ensure customer satisfaction in accordance with the key performance indicators outlined in the Contract, unless otherwise approved by the Project Manager
- Provide a report on progress in delivering the requirement to the DHSC Project Manager on a bi-monthly basis two days ahead of the progress review meetings.
- Attend bi-monthly meetings on site to review progress and discuss the service, as required by the Project Manager.
- Attend a post-contract review with the Department to review whether the objectives of the contract were met, to review the benefits achieved and to identify any lessons learnt for future projects.
- Apply recognised financial management tools to ensure financial propriety, accountability and value for money (VFM) – including the appropriate management of the dispersment of all funding under the contract, including for example, to sub-contractors, to local authorities or to local authority regional representatives.
- Invoice DHSC in a timely manner each month of the contract, adhering to the service standards outlined in the contract. Detail of breakdown on each invoice to be agreed with client and successful supplier to ensure transparency of costs and reduce any administrative burdens.

Schedule 8 - Commercially sensitive information

Redacted in line with Section 43 of The FOIA

