



FCDO Services

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Terms and Conditions of Contract for Goods and Services (Contract)

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Document control

Document Name	Terms and Conditions of Contract for Goods and Services
Author	FCDO Services - Procurement
Version	V7.0 28/02/2022

Change history

Version	Date	Revisions
V1.0	10/09/2014	A Darby
V1.1	02/09/2015	Clauses 5.9 and 20.2.7 added
V1.2	02/02/2018	R Crayford-Venn GDPR Clauses added
V1.3.	15/03/2018	R Crayford-Venn GDT updates added
V2	15/06/2018	B Salmon - GDPR clauses revised (in line with CCS guidance) and addition of compensation on termination provisions, amalgamated previous separate Goods & Services terms
V3	26/09/2018	A Cable – Added Vicky Muronen comments re destruction of Authority data.
V3.1	28/02/2019	A Cable - Deleted clause 5.5 (as Burges Salmon left as “Not Used”). Amended remaining sub-clauses under 5 to suit
V3.2	02/09/2019	J Madgin – Modern Slavery clauses 21.6 - 21.7 added
V3.3	04/10/2019	A Cable – Definition of Force Majeure amended to exclude EU exit related events
V4.0	080420	B Salmon – Updated terms to reflect legislative changes, amendments made to clauses impacted by the practicalities of a contract being issued to a service provider before a purchase order and force majeure provisions updated.
V5.0	12/11/2020	Rebranded, name of FCO Services changed to FCDO Services
V6.0	07/05/2021	DACB - Legal update for compliance with CCS standard practice, Brexit, legislative updates, and best practice.
V7.1	03/03/2022	DACB – Legal update for best practice and data protection updates

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Abbreviations

Abbrev.	Meaning
FCDO	Foreign, Commonwealth and Development Office

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1 Interpretation

1.1 In these terms and conditions:

“Agreement” means the contract between (i) the Customer acting as part of the Crown; and (ii) the Supplier constituted by the Supplier’s acceptance of the Purchase Order, comprising these terms and conditions, and any specification, method statement, or other document referred to in this agreement or the Purchase Order.

“Business Contact Information” has the meaning given in clause 16.2.1

“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.

“Charges” means the charges for the Goods and/or Services as specified in the Purchase Order.

“Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential.

“Customer” means the organisation identified in the letterhead of the Purchase Order.

“Customer Premises” means the location(s) in and/or from which the Supplier is required to provide the Services as set out in the Purchase Order and as updated by the Customer and notified to the Supplier from time to time.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Protection Act” means the Data Protection Act 2018;

“Data Protection Legislation” means all applicable data protection and privacy laws and regulations guidance and codes of practice issued from time to time, which relate to the protection of personal data including, without limitation: (i) the UK GDPR; (ii) the Data Protection Act; (iii) the Data Protection (Charges and Information) Regulations 2018; (iv) the Privacy and Electronic Communications (EC Directive) Regulations 2003; (v) any other legislation in force in the UK from time to time in respect of data protection and privacy guidance and codes of practice issued from time to time by the Data Protection Regulator,

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in each case as amended, updated or re-enacted from time to time; and (vi) guidance and codes of practice issued by the European Data Protection Board or the Article 29 Working Party prior to 1 Jan 2021.

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Regulator” means the UK Information Commissioner’s Office and any other supervisory authority with jurisdiction over either party, and in each case any successor body from time to time.

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Date of Delivery” means that date by which the Goods must be Delivered to the Customer, as specified in the Purchase Order.

“Default” means any breach of the obligations or warranties of the relevant Party (including abandonment of the Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Agreement and in respect of which such Party is liable to the other.

“Deliver” means hand over the Goods to the Customer at the address and on the date specified in the Purchase Order, which shall include unloading and any other specific arrangements agreed in accordance with clause 7 "Delivered" and "Delivery" shall be construed accordingly.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

“Equipment” means any equipment provided by the Supplier in the performance of the Services, including plant, machinery, tools and vehicles of any nature.

“Expiry Date” means the date that the Agreement expires as stated in the Purchase Order.

“FOIA” means the Freedom of Information Act 2000.

“Force Majeure Event” means any circumstance not within a Party's reasonable control including, without limitation:

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- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic, save for events arising out of or in connection to either or both coronavirus (the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)) and/or COVID-19 (the official designation of the disease which can be caused by coronavirus);
- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (iv) nuclear, chemical or biological contamination or sonic boom;
- (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (vi) collapse of buildings, fire, explosion or accident;
- (vii) any labour or trade dispute, strikes, industrial action or lockouts;
- (viii) non-performance by suppliers or subcontractors; and
- (ix) interruption or failure of utility service.

“Form of Agreement” means the form of agreement comprising part of this Agreement.

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

“General Anti-Abuse Rule” 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 NICs.

“Goods” means the goods to be supplied (if any) by the Supplier to the Customer under the Agreement as described in the Purchase Order.

“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.

“Government Buying Standards” means the standards published at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“Information” has the meaning given under section 84 of the FOIA.

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“Key Personnel” means any persons specified as such in the Purchase Order or otherwise notified as such by the Customer to the Supplier in writing.

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

“MSA” means the Modern Slavery Act 2015.

“Occasions of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 of the Term of the Agreement or to a civil penalty for fraud or evasion;

“NICs” means National Insurance contributions.

“Party” means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them.

“Property” means the property, other than real property, made available to the Supplier by the Customer in connection with the Agreement.

“Protective Measures” means appropriate technical and organisational measures which may include: obfuscation, pseudonymisation and encryption of Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Public Sector Classification Guide” means the guide issued by the Office for National Statistics from time to time, listing current and former public sector bodies.

“Purchase Order” means the order from the Customer to the Supplier relating to Goods

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and/or Services provided by the Supplier to the Customer under this Agreement, including any supplementary documentation, referred to by the Parties in the Purchase Order.

“Purchase Order Number” means the Customer’s unique number relating to the order for Goods to be supplied and/or Services to be provided by the Supplier to the Customer in accordance with the terms of the Agreement.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.

“Relevant Transfer” a transfer of employment to which the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive applies.

“Request for Information” has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term “request” shall apply).

“Schedule of Processing” means a schedule of processing of Personal Data which sets out the details of the Processing activities to be undertaken by the Supplier pursuant to the Agreement.

“Services” means the services (if any) to be supplied by the Supplier to the Customer under the Agreement as described in the Purchase Order.

“Specification” means the specification for the Goods and for the Services respectively to be supplied by the Supplier to the Customer (including as to quantity, description and quality) as specified in the Purchase Order and associating documentation.

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement.

“Staff Vetting Procedures” means vetting procedures that accord with Good Industry Practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time.

“Start Date” means that date that the Agreement starts as stated in the Purchase Order.

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement.

“Supplier” means the organisation named as Supplier in the Purchase Order.

“Term” means the period from the Start Date until the Expiry Date, as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

“UK GDPR” means GDPR as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020;

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“**VAT**” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 References to numbered clauses are references to the relevant clause in these terms and conditions.

1.2.2 Any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.

1.2.3 The headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement.

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

1.2.5 The word ‘including’ shall be understood as meaning ‘including without limitation’.

1.2.6 Any reference to “Goods” shall apply only if and to the extent that this Agreement relates to the provision of “Goods”; and

1.2.7 Any reference to “Services” shall apply only if and to the extent that this Agreement relates to the provision of “Services”.

2 Basis of Agreement

2.1 The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or the Services subject to and in accordance with the terms and conditions of the Agreement.

2.2 Subject to clause 2.1, the Supplier shall accept the Customer’s offer by either signing the Purchase Order, or confirming acceptance in writing to the Customer, or by performing the Services or delivering the Goods. The Customer shall not accept any additional or amended terms from the Agreement.

3 Supply of Goods and Services

3.1 The Supplier shall supply the Goods and/or the Services to the Customer in accordance with Good Industry Practice and subject to and in accordance with this Agreement, including the Specification.

3.2 The Supplier shall co-operate with the Customer in all matters relating to the provision of the Goods and/or Services and comply with all of the Customer’s instructions.

3.3 The Supplier warrants, represents, undertakes and guarantees that the Goods shall:

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- 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for twelve (12) months after Delivery;
- 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- 3.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
- 3.3.4 be free from design defects;
- 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
- 3.3.6 the Supplier itself shall, comply with all applicable Law.
- 3.4 If following inspection or testing the Customer considers that the Goods do not conform with the Specification, or otherwise with this Agreement, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 In supplying the Services, the Supplier shall:
 - 3.5.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.5.2 perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 3.5.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.5.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.5.5 comply with all applicable Laws; and
 - 3.5.6 provide all Equipment required to provide the Services.
- 3.6 The Customer may, by written notice to the Supplier, at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4 Term

- 4.1 The Agreement shall take effect on the Start Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to twelve (12) months (or as otherwise agreed in the Form of Agreement) by giving not less than ten (10) Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Agreement shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Goods and/or Services respectively shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods (including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage) and/or the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and/or Services to which the VAT invoice relates.
- 5.3 Following Delivery of the Goods and in respect of the Services, the Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, which it shall do in a timely fashion, (and for the avoidance of doubt the Customer agrees that its undue delay in verifying an invoice shall not constitute sufficient justification not to regard an invoice as valid and undisputed) including the relevant Purchase Order Number and a breakdown of the Goods and/or Services supplied in the invoice period. An invoice will not be considered valid unless it contains the information as set out in this clause 5.3.
- 5.4 In consideration of the supply of the Goods and/or the Services, as the case may be, by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than thirty (30) days after receipt of a valid invoice.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods or of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 20.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 23.23.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

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- 5.7 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.7.1 provisions having the same effects as clauses 5.3 5.3 to 5.6 of this Agreement; and
 - 5.7.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.6 to this 5.7 of this Agreement.
- 5.8 In clause 5.7 5.7, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6 Cancellation

- 6.1 The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss relating to the cancellation of Goods. Cancellation of an order in accordance with this clause 6 shall not terminate this Agreement.

7 Delivery

- 7.1 The Supplier shall deliver the Goods to the Customer on or by the Date of Delivery at the address specified in the Purchase Order, unless otherwise agreed by the Customer in writing. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
- 7.2 Any access to the Customer’s premises and any labour and Equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided without acceptance by the Customer or the Crown of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other

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wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer or the Crown, or their respective agents and sub-contractors, may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier, agents or sub-contractors.

- 7.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be delivered.
- 7.4 Unless otherwise stipulated by the Customer in the Purchase Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 7.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods; or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common Law, the Supplier agrees that the Customer shall be entitled:
 - 7.5.1 to terminate the Agreement;
 - 7.5.2 to require the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
 - 7.5.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 7.5.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
 - 7.5.5 to buy the same or similar Goods from another supplier and to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

8 Property and Guarantee of Title

- 8.1 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking).
- 8.2 The Supplier warrants that:
 - 8.2.1 it has full clear and unencumbered title to all the Goods; and
 - 8.2.2 at the Date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

9 Premises and Equipment

- 9.1 If agreed in writing between the Parties, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All Equipment brought onto the Customer's premises by the Supplier, or its agents or sub-contractors shall be at the Supplier's risk.
- 9.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, Equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition in accordance with Good Industry Practice. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier, or its agents or sub-contractors other than fair wear and tear.
- 9.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, access the premises to inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 9.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 9.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 9.6 Without prejudice to clause 9.7, any Equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such Equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 9.7 The Supplier shall reimburse the Customer for any loss or damage to the Equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Any equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days of receiving such equipment.

10 Staff and Key Personnel

- 10.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 10.1.1 refuse admission to the relevant person(s) to the Customer's premises;

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- 10.1.2 direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s); and/or
- 10.1.3 require that the Supplier replace any person removed under this clause 10.1 with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered, and the Supplier shall comply with any such notice.
- 10.2 The Supplier shall:
- 10.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;
- 10.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement;
- 10.2.3 ensure all pay and benefits for Staff are paid for a standard working week meet, at least, national legal standards in the country of employment and provide all Staff with written and readily understandable information about their employment conditions in respect of pay before they enter employment and about their pay for the pay period concerned each time that they are paid;
- 10.2.4 ensure that the working hours of Staff comply with the Law, and any collective agreements;
- 10.2.5 ensure that all Staff are employed on the condition that they are permitted to work in the UK and that the Supplier shall notify the Customer immediately if a member of Staff is not permitted to work in the UK; and
- 10.2.6 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 10.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 10.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 10.5 For the duration of the Agreement and for a period of twelve (12) months thereafter neither the Customer nor Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Goods or Services without that other Party's prior written consent, save as to when a Relevant Transfer applies to such member of staff.

11 Assignment and Sub-Contracting

- 11.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement.
- 11.2 The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall at all times be liable for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 11.3 Where the Customer has provided the Supplier with consent to enter a sub-contract, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

12 Intellectual Property and Indemnity

- 12.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 12.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Customer and the Customer hereby assigns to the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement (with full title guarantee and free from all third party rights).
- 12.3 In respect of any background IPR which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Goods and Services provided, the Supplier grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) including any modifications to or derivative versions of any such intellectual property rights.
- 12.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods or of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.
- 12.5 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Goods or Services and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The

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Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

13 Governance and Records

13.1 The Supplier shall:

13.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

13.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

13.2 The Supplier shall keep and maintain until six (6) years after the end of the Agreement, or as long a period as may otherwise be agreed between the Parties, full and accurate records of the Agreement including the Goods and Services supplied under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

14 Confidentiality, Transparency and Publicity

14.1 Subject to clause 14.2, each Party shall:

14.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

14.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

14.2 Notwithstanding clause 14.1, a Party may disclose Confidential Information which it receives from the other Party:

14.2.1 where disclosure is required by applicable Law or by a court of competent jurisdiction;

14.2.2 to its auditors or for the purposes of regulatory requirements;

14.2.3 on a confidential basis, to its professional advisers;

14.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

14.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information

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pursuant to this clause 14.2.5 14.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

14.2.6 where the receiving Party is the Customer:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body, any part of the Crown, to Parliament and Parliamentary Committees, or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 15.

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 Customer under this clause 14.

14.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

14.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

14.5 The Supplier shall make available to the Customer, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

14.6 The Supplier shall:

14.6.1 allow authorised representatives of the Customer and/or the National Audit Office to examine the Supplier's records, documents and any other information deemed necessary including but not limited to access to any Equipment used relating to the Agreement and provide such copies and oral or written explanations as may reasonably be required; and

14.6.2 allow the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such

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documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Customer and for carrying out examinations into the economy, efficiency and effectiveness with which the Customer has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.

15 Freedom of Information

- 15.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall:
- 15.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the EIR;
 - 15.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 (two) Working Days of receipt;
 - 15.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 15.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 15.2 The Supplier acknowledges that the Customer may be required under the FOIA and the EIR to disclose Information concerning the Supplier or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods is exempt from disclosure in accordance with the FOIA and/or the EIR.

16 Data Protection

- 16.1 In addition to the definitions contained in clause 1.1 of this Agreement, "Controller", "Processor", "Processing", "Data Subject", "Personal Data", "Personal Data Breach" and "Data Protection Officer" take the meaning given in the UK GDPR.
- 16.2 The Parties acknowledge that for the purposes of the Data Protection Legislation:

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- 16.2.1 where the Parties share business contact information (such information being limited to the names and business telephone numbers and email addresses of employees responsible for the administration and management of the Agreement (“Business Contact Information”)) each Party is a separate independent Controller of the information that they receive from the other Party; and
- 16.2.2 where the Supplier Processes Personal Data of the Customer other than Business Contact Information, such Processing activities shall be detailed in a Schedule of Processing and the Customer is the Controller and the Supplier is the Processor.
- 16.3 The Parties shall comply with all Data Protection Legislation in relation to any Personal Data processed and neither Party shall by act or omission, put the other Party in breach of the Data Protection Legislation.

The Supplier as Processor

- 16.4 If the Parties agree that the Supplier shall be a Processor in respect of Personal Data other than Business Contact Information, the Parties shall enter into a separate Schedule of Processing which the Parties hereby agree shall be incorporated into the Agreement by reference and the following clauses 16.5 to 16.22 **Error! Reference source not found.** inclusive shall apply. The only processing that the Supplier is authorised to do shall be as set out in the Schedule of Processing and may not be determined by the Supplier.
- 16.5 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 16.6 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 16.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 16.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 16.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 16.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 16.7 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 16.7.1 process that Personal Data only in accordance with a Schedule of Processing and any further documented instructions received from the Customer, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

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16.7.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer, as appropriate, to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

16.7.3 ensure that:

- (a) the Staff do not process Personal Data except in accordance with this Agreement (and in particular the Schedule of Processing);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Supplier's duties under this clause 16;
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (iii) 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 Customer or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

16.7.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or Article 73 of the Data Protection Act) as determined by the Customer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Customer in meeting its obligations); and
- (d) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

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- 16.7.5 on termination of the Agreement, and at any time on the request of the Customer, at the written direction of the Customer, immediately delete or return any Personal and any other Customer Data (and any copies of it) to the Customer unless the Supplier is required by Law to retain the Personal and any other Customer Data. The Supplier shall confirm in writing that it has complied with this obligation.
- 16.8 Subject to clause 16.10, the Supplier shall notify the Customer immediately (and in any event within twenty four (24) hours) if it receives:
- 16.8.1 a Data Subject Access Request (or purported Data Subject Access Request) (and the Supplier shall not respond to such request unless so directed by the Customer);
- 16.8.2 a request to rectify, block or erase any Personal Data;
- 16.8.3 any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 16.8.4 any communication or enquiry from the Information Commissioner, Data Protection Regulator or any other regulatory authority in connection with Personal Data under this Agreement; and/or
- 16.8.5 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.
- 16.9 The Supplier shall notify the Customer immediately (and in any event within 24 hours) if it becomes aware of a Data Loss Event and, following notification, shall provide such information and assistance as is reasonably required by the Customer in order for the Customer to notify the Data Loss Event to the Information Commissioner and/or the Data Subjects, in accordance with the Data Protection Legislation.
- 16.10 The Supplier's obligation to notify under clauses 16.8 and 16.9 shall include the prompt provision of further information to the Customer in phases, as details become available.
- 16.11 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance and information in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under 16.8 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 16.11.1 the Customer with full details and copies of the complaint, communication or request;
- 16.11.2 assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 16.11.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- 16.11.4 assistance as requested by the Customer following any Data Loss Event;
and

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- 16.11.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 16.12 Without prejudice to clause 16.13, the Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 16.12. This requirement does not apply where the Supplier employs fewer than two hundred and fifty (250) staff, unless:
- 16.12.1 the Customer determines that the processing is not occasional;
- 16.12.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
- 16.12.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.13 The Supplier shall allow for and contribute to audits (including inspections) of its Data Processing activity by the Customer or the Customer's designated auditor to enable the Customer to satisfy itself of the Supplier's compliance with this Agreement and the Data Protection Legislation.
- 16.14 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 16.15 The Supplier undertakes that it shall not allow any Sub-processors to have access to, receive or process any Personal Data without obtaining prior written consent from the Customer (such consent to be at the sole discretion of the Customer).
- 16.16 Where the Customer gives consent pursuant to clause 16.15, the Supplier shall:
- 16.16.1 enter into a written agreement with the Sub-processor in at least equivalent terms to the undertakings contemplated by the Supplier to the Customer and described in this clause 16.16;
- 16.16.2 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require; and
- 16.16.3 procure that any Sub-processors shall comply with all Data Protection Legislation in relation to any Personal Data processed and shall ensure that no Sub-processors shall, by act or omission, put either Party in breach of the Data Protection Legislation.
- 16.17 The Supplier shall notify the Customer promptly (and in any event within five (5) Working Days) of any unauthorised use or disclosure of Personal Data of which the Supplier or any of its Sub-processors becomes aware and shall promptly provide such information and assistance as is reasonably required by the Customer to respond to and terminate such unauthorised use and/or disclosure.
- 16.18 If any Personal Data is lost or corrupted as a result of any act or omission of the Supplier or any of its Sub-processors, the Supplier shall restore the Personal Data at its own expense.

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- 16.19 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.20 The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 16.21 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 16.22 The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer arising out of, or in connection with, the Supplier's breach of this clause 16 or the Data Protection Legislation.

17 Liability

- 17.1 The Supplier shall not be responsible for any injury, loss, liability, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 17.2 Subject always to clauses 17.3 and 17.4:
- 17.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier for the duration of the Term;
- 17.2.2 the aggregate liability of the Customer in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 100% of the Charges paid or payable to the Supplier for the duration of the Term;
- 17.2.3 except in the case of claims arising under clauses 12.4 12.4 and 22.3 22.3, in no event shall either Party be liable to the other Party for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;

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- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

17.3 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:

17.3.1 death or personal injury caused by its negligence or that of its Staff;

17.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

17.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

17.3.4 any other matter which, by Law, may not be excluded or limited.

17.4 The Supplier's liability under the indemnity in clauses 12.4, 16.22 and 22.3 shall be unlimited.

18 Force Majeure

18.1 Provided it has complied with clause 18.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement and/or any Purchase Order by a Force Majeure Event (the "Affected Party"), the Affected Party shall not be in breach of this Agreement and/or any Purchase Order or otherwise be liable for any such failure or delay in the performance of such obligations as long as and only to the extent that the performance of those obligations are directly affected by a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

18.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.3 The Affected Party shall:

18.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven (7) days from its start, notify the other Party in writing of the details of the Force Majeure Event, the date on which it started, its likely or potential duration, the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement and/or any Purchase Order, and any action the Affected Party proposes to take to mitigate its effect;

18.3.2 use all reasonable endeavours to prevent and mitigate the effect of the Force Majeure Event on the performance of its obligations; and

18.3.3 where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

18.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 18.4 to the extent that consequences of the relevant Force Majeure Event:

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- 18.4.1 is capable of being mitigated by the Supplier but the Supplier has failed to do so; and/or
- 18.4.2 should have been foreseen and prevented or avoided by a prudent supplier of goods and/or services similar to the Goods and/or Services, operating to the standards required by this Agreement and/or any relevant Purchase Order.
- 18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) days, the Party not affected by the Force Majeure Event may terminate this Agreement and/or any relevant Purchase Order forthwith on giving notice in writing to the other Party.
- 18.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and/or any relevant Purchase Order.
- 18.7 Relief from liability for the Affected Party under this clause 18 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and/or any relevant Purchase Order and shall not be dependent on the serving of notice under clause 18.6 **Error! Reference source not found.**

19 Brexit

- 19.1 If, at any point during the term of this agreement a Brexit Trigger Event occurs which has (or is likely to have) an Adverse Impact on a party, the impacted party may:
- 19.1.1 require the other party to negotiate an amendment to this agreement to alleviate the Adverse Impact; and
- 19.1.2 if renegotiation fails, terminate this agreement.
- 19.2 A Brexit Trigger Event means any of the following events if caused by Brexit:
- 19.2.1 Change in Law: a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party, including any change to requirements on product markings. For these purposes, Law means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, retained EU law within the meaning of section 6(7) of the European Union (Withdrawal) Act 2018, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- 19.2.2 Trade tariff: in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or Services or any raw materials or components used by the Supplier in the creation or supply of the Goods or Services;
- 19.2.3 Licence or consent: in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement;

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- 19.2.4 Currency Fluctuation: a change of more than 10% to the rate of exchange of sterling against the euro since the price for the Goods and/or Services was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
- 19.2.5 Other change: an unforeseeable (at the Effective Date) change to the business or economic environment in which a party operates which is not caused by 19.2.1 to 19.2.3 above or by any fluctuation in currency exchange rates.

20 Termination

- 20.1 The Customer may terminate the Agreement without cause at any time by notice in writing to the Supplier to take effect on any date falling at least one (1) month (or, if the Agreement is less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.
- 20.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 20.2.1 (without prejudice to clause 20.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 20.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 20.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied to the Customer's satisfaction within (thirty) 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 20.2.4 undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
- 20.2.5 breaches the provisions of clauses 10.2, 14, 15 16 and/or 21;
- 20.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 20.2.6) in consequence of debt in any jurisdiction;
- 20.2.7 fails to comply with legal obligations in the fields of environmental, social or labour Law;
- 20.2.8 fails to meet the requirements of the Specification relating to the Goods and Services provided.

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20.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 20.2.4 or any potential such change of control.

20.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within (ninety) 90 days of them falling due.

Partial Termination

20.5 Where the Customer has the right under clause 20.1 and/or 20.2 to terminate the Agreement, the Customer may do so in whole, or in part provided that the remaining parts of the Agreement can still operate effectively to deliver the intended purpose. Where the Customer terminates this Agreement in part the remainder of the Agreement shall remain in force and unaffected.

Consequences of Termination

20.6 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 3.3, 3.4, 3.5, 9.1, 9.2, 9.6, 9.7, 10, 13.2, 14, 15, 16, 17, 20.7, 21.4, 21.5, 22.3, 23, and 24.8, and any other term or condition of the Agreement that either expressly or by implication has effect after termination.

20.7 Upon termination or expiry of the Agreement, the Supplier shall (at the Supplier's own cost):

20.7.1 give all reasonable assistance to the Customer, including in any re-procurement of the Goods and/or Services and any incoming supplier of Goods and/or Services;

20.7.2 immediately return to the Customer all Property, documents, information, and data (including but not limited to Confidential Information, Personal Data and materials containing the Customer's intellectual property) in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services in the form in which it was delivered to the Supplier or in another such form as reasonably requested by the Customer;

20.7.3 immediately vacate any Customer Premises occupied by the Supplier;

20.7.4 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any replacement supplier of the Services and/or the completion of any work in progress and/or substantially similar services, including following the reasonable instructions of the Customer;

20.7.5 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Customer and/or the replacement supplier to conduct due diligence;

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20.7.6 when the Customer holds it necessary, enter into an ethical wall agreement at any point during a re-tendering or contemplated re-tendering of the Goods and/or Services or any part of the Goods and/or Services,

And in the event of a partial termination under clause 20.5 above, the Supplier shall comply with the obligations in this clause 20.7 in respect of the terminated Goods and/or Service(s).

20.8 Where the Customer terminates the Agreement pursuant to this clause 20 (Termination):

20.8.1 the Customer may recover from the Supplier any costs reasonably incurred by the Customer as a result of termination, including those costs arising from the procurement of alternative arrangements for the supply of the Goods and Services; and

20.8.2 no further Charges shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further Charges then due to the Supplier.

21 Compliance

21.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

21.2 The Supplier shall:

21.2.1 comply with the reasonable requirements of the Customer's security arrangements;

21.2.2 comply with all the Customer's health and safety measures and all applicable Law regarding health and safety;

21.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

21.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);

21.2.5 take all reasonable steps to secure the observance of clause 21.2.4 by all Staff;

21.2.6 supply the Goods and any packaging in accordance with the Customer's environmental policy as provided from time to time;

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- 21.2.7 comply with the applicable Government Buying Standards; and
- 21.2.8 be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and Services and shall pay the Customer any extra costs occasioned due to the Customer as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Customer.
- 21.3 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Purchase Order, any statutory requirements including, where relevant, guidance relating to the UKCA marking, and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 21.3.
- 21.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 21.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 21.5.1 the Official Secrets Acts 1911 to 1989; and
- 21.5.2 section 182 of the Finance Act 1989.
- 21.6 The Supplier:
- 21.6.1 shall not use, or allow its agents or sub-contractors to use, forced, bonded or involuntary prison labour;
- 21.6.2 shall not require any Staff to lodge deposits or identify papers with their employer or deny those employees freedom to leave their employer after reasonable notice;
- 21.6.3 warrants and represents that neither it nor any of its sub-contractors, nor any other persons associate with it has been convicted of any offence involving slavery and trafficking or has been or is subject to any inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere around the world;
- 21.6.4 warrants and represents that it conducts its business in a manner consistent with all applicable laws, regulations and codes including the MSA and all analogous legislation in place in any part of the world
- 21.6.5 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 21.6.6 shall make reasonable enquiries to ensure that its officers, employees, sub-contractors and agents have not been convicted of slavery or human trafficking offences anywhere around the world;

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- 21.6.7 shall have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance with the MSA and shall include in its contracts with its sub-contractors appropriate anti-slavery and human trafficking provisions;
- 21.6.8 shall implement due diligence procedures and maintain a complete set of records to trace and to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations and providing Services to the Customer under this Agreement;
- 21.6.9 warrants and represents that its responses to all slavery and trafficking due diligence questionnaires issued to it by the Customer from time to time are complete and accurate;
- 21.6.10 shall prepare and deliver to the Customer at the commencement of this Agreement, and update on a frequency defined by the Customer, a 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;
- 21.6.11 shall not use, or allow its employees, agents or sub-contractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Staff;
- 21.6.12 implement a system of training for its employees to ensure compliance with the MSA.
- 21.6.13 shall not use, or allow its agents or sub-contractors to use, child or slave labour; and
- 21.6.14 shall report the discovery or suspicion of any slavery or trafficking by it or its agents or sub-contractors immediately to the Customer and the Modern Slavery Helpline (<https://www.modernslaveryhelpline.org/report> or 08000 121 700).
- 21.7 The Supplier shall notify the Customer as soon as it becomes aware of:
- 21.7.1 any breach, or potential breach, of the obligations set out in this clause 21; and/or
- 21.7.2 any actual or suspected slavery or trafficking in a supply chain which relates to the Agreement.
- 21.8 If the Supplier notifies the Customer pursuant to clause 21.7, it shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
- 21.9 If the Supplier is in Default under clauses 21.7 or 21.8 the Customer may by notice:
- 21.9.1 require the Supplier to remove from performance of the Agreement any sub-contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
- 21.9.2 immediately terminate the Agreement.

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- 21.10 The Supplier shall comply with the provisions of the Specification relating to ethics, sustainability and environmental impact and the Customer shall be entitled at any time to request details from the Supplier to confirm such compliance.
- 21.11 The Supplier warrants and represents for the Term of the Agreement that it has notified, and/ or shall notify the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
- 21.12 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly give the Customer:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require from time to time.

22 Prevention of Fraud and Corruption

22.1 The Supplier shall:

- 22.1.1 not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement; and
- 22.1.2 comply with all Laws, statutes, and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010. Each Party agrees that it shall not engage in any activity, practice or conduct abroad which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 22.2 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 22.3 If the Supplier or the Staff engages in conduct prohibited by clause 22.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 22.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods or Services; or

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22.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause 22

22.4 The Supplier warrants and represents that in entering into this Agreement it has not committed fraud or otherwise breached the any Laws, statutes, and/or regulations relating to anti-bribery and anti-corruption.

23 Dispute Resolution

23.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

23.2 If the dispute cannot be resolved by the Parties within one (1) month of being escalated as referred to in clause 23.1 **Error! Reference source not found.**, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

23.3 If the Parties fail to appoint a Mediator within one (1) month, or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable Law.

23.4 The obligations of the Parties under the Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Agreement at all times.

24 General

24.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

24.2 A person who is not a party to the Agreement 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 the Parties.

24.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

24.4 Subject to any prior Schedule of Processing existing between the Parties, the Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

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- 24.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing in accordance with clause 25 (Notices) and expressly stated to be a waiver. 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 Agreement.
- 24.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 24.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 24.8 If any provision of the Agreement is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
- 24.9 Subject to clause 19, the Supplier shall neither be relieved of its obligations to supply the Goods and/or Services in accordance with this Agreement nor be entitled to an increase in the Charges as a result of:
- 24.9.1 a change in Law of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects other Suppliers of goods and/or services that are the same or similar; or
- 24.9.2 a change in Law that relates specifically to the business of the Supplier and which would not affect other Suppliers of goods and/or services that are the same or similar, where such change is not foreseeable at the date of the relevant Purchase Order.
- 24.10 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the Agreement. The Supplier will notify the Customer immediately giving full particulars of any such conflict of interest which may arise.
- 24.11 This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Agreement 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 fraudulent misrepresentation.

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24.12 This Agreement may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same agreement.

25 Notices

25.1 Any notice to be given under the Agreement shall be in writing and may be served by:

25.1.1 personal delivery, first class recorded; or

25.1.2 subject to clause 25.3, e-mail,

in each case to the relevant Party, sent to the name and address stated in the Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

25.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

25.3 Notices under clauses 18 (Force Majeure) and 19(Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 25.1. Failure to send any original notice by personal delivery or recorded delivery in accordance with this clause 25.3 shall invalidate the service of the related email transmission.

26 Insurance

26.1 The Supplier must, at its own cost:

25.1.1 obtain and maintain insurance with a reputable insurance provider of good standing to cover its total liability under this Agreement; and

25.1.2 obtain and maintain any specific insurances that the Customer notifies to the Supplier as a condition of entering into this Agreement,

and on request provide evidence of such insurance on request by the Customer.

26.2 The Supplier shall ensure that any insurance policy is maintained in accordance with Good Industry Practice and (so far as reasonably practicable) is on terms no less favourable than those generally available to a prudent contractor in respect of the risks insured in the insurance market from time to time.

26.3 The Supplier shall provide to the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

27 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it or in connection with it, shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.