
**Contract for the Provision of Services.
Support for Enforcing Tobacco Control
Legislation**

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|-----------------------|--|
| The Authority | The Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London, SW1H 0EU acting as part of the Crown |
| The Contractor | ITSA Limited which is a company registered in England and Wales under company number 02767942 and whose registered office is at 1 Sylvan Court, Sylvan Way, Southfields Business Park Basildon, Essex SS15 6TH |
| Date | 13th December 2018 |

1. Background

1.1. The Authority placed a contract notice in the Contracts Finder portal on 21/06/2018 seeking tenders from providers interested in entering into an arrangement for the supply of national support for local authority tobacco regulatory services to the Authority.

1.2 On 21/06/2018 the Authority issued an invitation to tender (the "Invitation to Tender") for the provision of Services – National Control for Tobacco Enforcement. In response to the Invitation to Tender, the Contractor submitted a tender to the Authority on 19/07/2018 (the "Tender"). On the basis of the Tender, the Authority selected the Contractor to enter into an agreement to provide such services to the Authority.

2. The Contract

2.1 This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Contractor undertake to comply with the provisions of the Schedules in the performance of this Contract.

2.2 The Contractor shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

2.3 The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

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

Signed by the authorised representative of THE AUTHORITY

| | |
|------------------|--|
| Name: | Redacted in line with Section 40 of The FOIA |
| Position: | |

Signed by the authorised representative of THE CONTRACTOR

| | |
|------------------|--|
| Name: | Redacted in line with Section 40 of The FOIA |
| Position: | |

Schedule 1 - Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

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

2 Term

- 2.1 This Contract shall commence on **Date both Parties sign the Contract** ("the **Commencement Date**") and the Term of this Contract shall expire on **31st March 2021** ("the **Expiry Date**"). The Term may be extended in accordance with Clause 2 (Extension) of Schedule 2 provided that the duration of this Contract shall be no longer than 9 months in total.

3

Authority Representative and Contractor Representative

3.1

The contract managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

Redacted in line with Section 40 of The Freedom of Information Act 2000 **Senior Tobacco Control Policy Manager. DHSC**

- 3.1.2 for the Contractor:

Redacted in line with Section 40 of The Freedom of Information Act 2000 **Bid & Contracts Executive**

4 Names and addresses for notices

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

- 4.1.1 for the Authority:

Redacted in line with Section 40 of The Freedom of Information Act 2000 **Senior Tobacco Control Policy Manager. DHSC**
Healthy Behaviours Team
Global and Public Health Group
Department of Health & Social Care,
Quarry House, Quarry Hill, Leeds, LS2 7UE

4.1.2 for the Contractor:
Company Secretary
Itsa Limited
1, Sylvan Court, Sylvan Way
Southfields Business Park
Basildon
Essex
SS15 6TH

5 Order of precedence

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

- 5.1.1 Schedule 1 (Key Provisions);
- 5.1.2 Schedule 4 (Specification);
- 5.1.3 Schedule 5 (Tender) (but only in respect of the Authority's requirements);
- 5.1.4 Schedule 2 (General Terms and Conditions);
- 5.1.5 Schedule 8 (Commercially Sensitive Information);
- 5.1.6 Schedule 10 (Staff Transfer);
- 5.1.7 Schedule 3 (Definitions and Interpretations); and
- 5.1.8 the order in which all subsequent Schedules, if any, appear.

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

6.1 The Parties agree that:

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

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

- (b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of Schedule 10 shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Contractor Employees, Parts A and B of Schedule 10 shall apply; and
 - (d) Part C of Schedule 10 shall not apply;
- 6.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 (shall not apply; and
- 6.1.3 Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services.

Optional Key Provisions

- 7 **Implementation phase** ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)
- 7.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 1.3 of Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule.
- 8 **Services Commencement Date (where the Services are to start at a date after the Commencement Date)** ☒ (only applicable to the Contract if this box is checked and the date is inserted in Clause 8.1 of this Schedule 1)
- 8.1 The Services Commencement Date shall be **on the date both Parties sign the Contract**.
- 9 **Different levels and/or types of insurance** ☒ (only applicable to the Contract if this box is checked and the table sets out the requirements)
- 9.1 The Contractor shall put in place and maintain in force the following insurances with the following minimum cover per claim:

| Type of insurance required | Minimum cover |
|----------------------------|---|
| Employer's Liability | not less than £1,000,000 per claim (unlimited |

| | |
|------------------------|---|
| | claims) |
| Public Liability | not less than £1,000,000 per claim (unlimited claims) |
| Professional Indemnity | Not less than £1,000,000 per claim |

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

10.5 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

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

10.7 In the event that:

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

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

the Authority may:

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

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

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

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

10.9 Within ten (10) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Contract from the Contractor

the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Contract is approved. Following approval the Contractor shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

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

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

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

12.1 The Authority may terminate this Contract at any time by giving not less than two (2) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice.

12.2 Subject to Clauses 19 (Liability) and 20 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with Clause 12.1 of this Schedule 1, then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 12.1 of this Schedule 1.

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

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

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

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

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

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

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

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

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

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

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

15.3 The Contractor shall, within three (3) Months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 12 for the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination or expiry of the Contract. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 12. If the Parties are unable to agree the contents of the Exit Plan within that ten (10) Working Day period, the principles set out in Schedule 12 shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.

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- 15.4 The Contractor shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Contractor shall:
- 15.4.1 submit the revised Exit Plan to the Authority for review;
 - 15.4.2 within ten (10) Working Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 12 and the changes that have occurred in the Services since the Exit Plan was last agreed; and
 - 15.4.3 if the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.
- 15.5 Until the agreement of the Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 12 and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Contractor shall ensure that it is able to implement the Exit Plan at any time.
- 15.6 Within thirty (30) days after service of a Termination Notice by either Party or six (6) Months prior to the expiration of the Contract:
- 15.6.1 the Contractor shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval; and
 - 15.6.2 the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 12; and
 - 15.6.3 until the agreement of the updated Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.

Schedule 2 - General Terms and Conditions

1 PROVISION OF SERVICES

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

in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

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

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

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

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

2 EXTENSION

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

3 CONTRACT PRICE

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

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

3.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the

Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Clause 14 (Recovery of Sums Due) of this Schedule 2.

- 3.4 The Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf) in respect of the Authority's obligation to accept unstructured electronic invoices from the Contractor where and as required under that procurement policy note (as amended from time to time).

4 PAYMENT AND VAT

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

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

4.10.2 that the Worker's contract may be terminated at the Authority's request if:

- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.10.1 of this Schedule 2; and/or
- (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 4.9 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and

4.10.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

5 PRICE ADJUSTMENT ON EXTENSION OF TERM

- 5.1 The Contract Price shall apply for the Term. In the event that the Authority agrees to extend the Term pursuant to Clause 2 (Extension) of this Schedule 2 the Authority shall, in the six (6) Month period prior to the expiry of the Term or, as the case may be, in such other period as may be appropriate, enter into discussion, in good faith, with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation to the Contract Price.
- 5.2 If the Parties are unable to agree a variation to the Contract Price in accordance with Clause 5.1 of this Schedule 2, the Contract shall terminate at the end of the Term.
- 5.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 5.4 Any increase in the Contract Price pursuant to Clause 5.1 of this Schedule 2 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index as may be specified in the Schedule 6 between the Services Commencement Date and the date six (6) Months before the end of the Term.

6 WARRANTIES AND REPRESENTATIONS

- 6.1 The Contractor warrants and undertakes to the Authority that:

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- 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 6.1.2 in entering the Contract it has not committed any Fraud;
- 6.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 6.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Contract;
- 6.1.5 it is not subject to any contractual obligation, compliance with which is likely to affect its ability to perform its obligations under the Contract;
- 6.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 6.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 6.1.8 in the three (3) years prior to the Commencement Date:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing

business concern, ability to fulfil its obligations under the Contract or provide the Services; and

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

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

6.2.2 promptly provide to the Authority:

(a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

6.3 The Contractor warrants and undertakes to the Authority that:

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

6.3.2 neither the Contractor nor any of its Contractor Personnel:

(a) has been has been convicted of any offence involving slavery and human trafficking; and

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

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

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

7 CHANGE CONTROL PROCESS

- 7.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender, as may be requested by the Authority from time to time.
- 7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

8 KEY PERSONNEL

- 8.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 8.2 The Contractor shall not remove or replace any Key Personnel unless:
- 8.2.1 requested to do so by the Authority;
 - 8.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 8.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 8.2.4 the Contractor obtains the Authority's prior written consent.
- 8.3 The Authority shall not unreasonably withhold its consent under Clause 8.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

9 CONTRACTOR PERSONNEL

9.1 At all times, the Contractor shall ensure that:

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

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

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

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

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

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

9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and the Services and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.

9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or

engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.

- 9.6 If the Contractor fails to comply with Clause 9.4 of this Schedule 2 within one (1) Month of the date of the request and, in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract with immediate effect by giving written notice to the Contractor at any time after the end of that one (1) Month period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with Clause 9.4 of this Schedule 2 shall be final and conclusive.

10 MANNER OF CARRYING OUT THE SERVICES

- 10.1 The Contractor shall begin performing the Services on the Services Commencement Date and continue to perform them for the Term. The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 10.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 10.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

11 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

- 11.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative. The Authority Representative and the

Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.

- 11.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Schedule 7 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 11.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.
- 11.4 At the Authority's request, within five (5) Working Days of such request, the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).
- 11.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.
- 11.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 11.6.1 whether the Contractor believes the objectives of the Contract were achieved;
 - 11.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 and that had been forecast in the Tender were achieved; and
 - 11.6.3 to identify any lessons learnt for future projects.
- 11.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 11.6.1 to 11.6.3 of this Schedule 2 as it sees fit.

12 RIGHT OF AUDIT

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

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

12.3 For the purpose of:

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

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

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

13 PROPERTY

13.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. The Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

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

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

13.3.1 a reasonable visual inspection, and

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- 13.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.
- 13.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.
- 13.5 The Contractor shall ensure the security of all the Property whilst in its possession.
- 13.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

14 RECOVERY OF SUMS DUE

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

15 CONFIDENTIAL INFORMATION

- 15.1 For the purposes of this Clause, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly Confidential Information.
- 15.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
- 15.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without the Disclosing Party's prior written consent;
 - 15.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and

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- 15.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 Clause 15.1 of this Schedule 2 shall not apply to the extent that:
- 15.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
 - 15.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;
 - 15.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
 - 15.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.3.5 it is independently developed without access to the other Party's Confidential Information.
- 15.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 15.5 The Contractor may only disclose the Confidential Information of the Authority to the Contractor Personnel directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

15.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Confidential Information of the Authority received otherwise than for the purposes of the Contract and the provision of the Services.

15.7 At the written request of the Authority, the Contractor shall procure that Contractor Personnel identified in the Authority's request shall sign a confidentiality undertaking (in a form acceptable to the Authority) prior to commencing any work in accordance with the Contract.

15.8 The Authority may disclose the Confidential Information of the Contractor:

15.8.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

15.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

15.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

15.8.4 on a confidential basis to a professional adviser, consultant, Contractor or other person engaged by any of the entities described in Clause 15.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;

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

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

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

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

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

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

16 AUTHORITY DATA

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

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

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

16.4 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

16.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.

16.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

16.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

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- 16.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
- 16.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 16.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

17 PROTECTION OF PERSONAL DATA

- 17.1 For the purposes of this Clause 17 (Protection of Personal Data), the terms "**Process**" and "**Processing**" shall have the meaning prescribed under the GDPR.
- 17.2 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under the Contract, the Parties acknowledge that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 17.3 The Contractor shall:
- 17.3.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to the Contractor during the Contract);
 - 17.3.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 17.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

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- 17.3.4 take all reasonable steps to ensure the reliability of and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
- (a) are aware of and comply with the Contractor's duties under this Clause 17.3;
 - (b) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
 - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the GDPR);
- 17.3.5 not disclose or transfer the Personal Data to any third party, Contractor Personnel or Sub-contractor unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under the Contract);
- 17.3.6 notify the Authority within five (5) Working Days if it receives:
- (a) a request from a Data Subject (or a third party on their behalf) for access to that person's Personal Data;
 - (b) a complaint or request relating to the Authority's obligations under the Data Protection legislation; or
 - (c) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.
- 17.3.7 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 17.3.6 of this Schedule 2), including by promptly providing:
- (a) the Authority with full details of the complaint, communication or request;

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- (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the complaint, communication or request within the relevant timescales set out in the GDPR;
 - (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
 - (d) any further information requested by the Authority;
- 17.3.8 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 12 (Right of Audit), the Contractor's data Processing activities (and/or those of its agents, and Sub-contractors) and comply with all reasonable requests or directions made by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 17.3.9 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and
- 17.3.10 not Process or otherwise transfer any Personal Data outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Authority.
- 17.4 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 17.5 The Contractor acknowledges that in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Personal Data that the Authority may be irreparably harmed (including harm to its reputation). In such circumstances, the Authority may proceed

directly to court and seek injunctive relief or other equitable relief or prevent any further breach (or attempted or threatened breach).

17.6 In the event that through any failure by the Contractor to comply with its obligations under the Contract, Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Contractor shall be liable for the costs of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Contractor.

17.7 The provisions of this Clause 17 (Protection of Personal Data) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Allocation of title to IPR

18.1.1 Save as expressly granted elsewhere under this Contract:

(a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely:

(i) the Contractor Background IPR; and

(ii) the Third Party IPR; and

(b) the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:

(i) Authority Background IPR;

(ii) Authority Data; and

(iii) Project Specific IPRs.

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

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

18.2 Assignments granted by the Contractor: Project Specific IPR

- 18.2.1 The Contractor hereby assigns to the Authority with full guarantee (or shall procure from the first owner the assignment to the Authority), title to and all rights and interest in the Project Specific IPRs. The assignment under this Clause 18.2.1 shall take effect as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs.
- 18.2.2 The Contractor shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority.
- 18.2.3 To the extent that it is necessary to enable the Authority to obtain the full benefits of ownership of the Project Specific IPRs, the Contractor hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-licence and/or commercially exploit any Contractor Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR.

18.3 Licences granted by the Contractor: Contractor Background IPR

- 18.3.1 The Contractor hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Contractor Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.
- 18.3.2 At any time during the Term or following the Expiry Date, the Contractor may terminate a licence granted in respect of the Contractor Background IPR under Clause 18.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Authority Cause which constitutes a material breach of the terms of Clause 18.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Contractor gives the Authority written notice specifying the breach and requiring its remedy.

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

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

18.4 Authority's right to sub-licence

18.4.1 The Authority may sub-licence:

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

that the sub-licence is on terms no broader than those granted to the Authority.

18.5 Authority's right to assign/novate licences

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

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

18.5.2 Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 18.3 (Licences granted by the Contractor: Contractor Background IPR).

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

18.6 Third Party IPR

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

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- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Contractor could seek to use; and
 - (b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.
 - 18.6.2 The Contractor shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than those on which such software is usually made available.
 - 18.6.3 Without prejudice to any other right or remedy of the Authority, if the Contractor becomes aware at any time, including after termination, that any Intellectual Property Rights for which the Authority does not have a licence in accordance with Clause 18.2.3 subsist in the Project Specific IPR, then the Contractor must notify the Authority within 10 days of what those rights are and which parts of the Project Specific IPR they are found in.

18.7 Licence granted by the Authority

- 18.7.1 The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Background IPR, the Project Specific IPRs and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
 - (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 15.7 (Confidentiality); and
 - (b) the Contractor shall not without the prior written consent of the Authority use the licenced materials for any other purpose or for the benefit of any person other than the Authority.
- 18.7.2 In furtherance of Clause 18.7.1(b) the Contractor shall ensure that no publication of work connected with, or arising out of, the Services occurs without the express prior written consent of the Authority. If the Contractor or any employee or student of

the Contractor wishes to make a Publication relating to the Services, the Contractor shall:

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

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

18.8 Termination of licences

18.8.1 Subject to Clauses 18.3.2 and/or 18.3.3 (Licences granted by the Contractor: Contractor Background IPR), all licences granted pursuant to this Clause 18 (Intellectual Property Rights) (other than those granted pursuant to Clause 18.6 (Third Party IPR) and 18.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.

18.8.2 The Contractor shall, if requested by the Authority, grant (or procure the grant) to the Replacement Contractor of a licence to use any Contractor Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 18.3.1 (Licences granted by the Contractor: Contractor Background IPR) subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.

18.8.3 The licence granted pursuant to Clause 18.7.1 (Licence granted by the Authority) and any sub-licence granted by the Contractor in accordance with Clause 18.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Contractor shall:

- (a) immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);

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- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Contractor containing such Authority Background IPR and/or Authority Data.

18.9 IPR Indemnity

- 18.9.1 The Contractor shall at during and after the Term, on written demand indemnify the Authority against all losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 18.9.2 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its own expense and sole option, either:
 - (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services;
 - (iii) there is no additional cost to the Authority; and

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

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

- (a) the Authority may terminate this Contract by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 18.9.1, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

19 LIABILITY

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

- 19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;
- 19.1.2 bribery or Fraud by it or its employees;
- 19.1.3 fraudulent misrepresentation; or
- 19.1.4 any liability to the extent that it cannot be excluded or limited by any applicable law.

19.2 Subject to Clauses 19.3, 19.5, 19.6 and 19.7 of this Schedule 2, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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- 19.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 19.4 Subject always to Clauses 19.1, 19.2, 19.6 and 19.7 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the greater of:
- 19.5.1 £340,000; or
- 19.5.2 one hundred and twenty five per cent (125%) of the total Contract Price paid or payable by the Authority to the Contractor for the Services.
- 19.5 Subject always to Clause 19.1, in no event shall either Party be liable to the other for any:
- 19.5.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
- 19.5.2 loss of savings (whether anticipated or otherwise); and/or
- 19.5.3 indirect or consequential loss or damage.
- 19.6 The Contractor shall not be able to exclude liability to the Authority for additional operational, administrative costs and/or expenses or wasted expenditure which the Authority incurs resulting from the direct Default of the Contractor.
- 19.7 The Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 19.7.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 19.7.2 any wasted expenditure or charges;

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- 19.7.3 the additional costs of procuring replacement Services for the remainder of the Term, which shall include any incremental costs associated with such replacement Services above those which would have been payable under the Contract;
- 19.7.4 any compensation or interest paid to a third party by the Authority; and
- 19.7.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 19.8 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 19.9 Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the performance by the Contractor of any and all of its obligations under the Contract and in respect of any losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor.
- 19.12 Clause 19 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

20 INSURANCE

- 20.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 20.2 The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.
- 20.3 Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 20.4 The Contractor shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Contractor pursuant to Clause 20 of this Schedule 2 and the Key Provisions

are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 20.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 20.6 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 19 (Liability) of this Schedule 2.

21 TRANSFER AND SUB-CONTRACTING

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

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

21.2.1 any other body established by the Crown; or

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

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

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

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

- 21.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Contract to a private sector body in accordance with Clause 21.2.3 of this Schedule 2 (the "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 22 (Termination on Insolvency and Change of Control) of this Schedule 2

shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 22 (Termination on Insolvency and Change of Control) of this Schedule 2 were references to the Transferee).

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

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

21.6.1 manage any Sub-contractors in accordance with Good Industry Practice;

21.6.2 comply with its obligations under the Contract in the provision of the Services;
and

21.6.3 assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to the Contract.

21.7 Prior to sub-contacting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:

21.7.1 the proposed Sub-contractor's name, registered office and company registration number; and

21.7.2 the scope of any Services to be provided by the proposed Sub-contractor.

21.8 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2, the Contractor shall also provide:

21.8.1 a copy of the proposed Sub-contract; and

21.8.2 any further information reasonably requested by the Authority.

21.9 The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2 (or, if later, receipt of any further information requested pursuant to Clause 21.8 of this Schedule 2), object to the appointment of the relevant Sub-contractor if they consider that:

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- 21.9.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under the Contract;
 - 21.9.2 the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
 - 21.9.3 the proposed Sub-contractor employs unfit persons; and/or
 - 21.9.4 the proposed Sub-contractor should be excluded in accordance with Clause 21.14 of this Schedule 2,

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

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

- 21.10.1 the Contractor's notice issued pursuant to Clause 21.7 of this Schedule 2; and
- 21.10.2 any further information requested by the Authority pursuant to Clause 21.8 of this Schedule 2

the Contractor may proceed with the proposed appointment.

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

- 21.11.1 requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 21.11.2 that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 21.10.1 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 21.10.3 of this Schedule 2 after a reasonable time has passed;

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

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- 21.11.3 21.10.4 giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;
- 21.11.4 giving the Contractor a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law; and
- 21.11.5 requiring a Sub-contractor to advertise and award any of its own Sub-contracts to the same extent as required of the Contractor, as set out at Clause 21.5 and
- 21.11.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 21.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 21.12 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed.
- 21.13 Notwithstanding any provision of Clauses 15 (Confidential Information) and 30 (Publicity) of this Schedule 2 if the Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 21.14 Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 21, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
- 21.15 Where the Authority considers whether there are grounds for exclusion of a Sub-contractor under Regulation 57 of the Regulations, then:
- 21.15.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
- 21.15.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not appoint the Sub-contractor and the Contractor shall comply with such a requirement.

21 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

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

22.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or

22.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Contractor be wound up or a resolution for the winding-up of the Contractor is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

22.1.3 a petition is presented for the winding-up of the Contractor (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Contractor pursuant to section 98 of the Insolvency Act 1986; or

22.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets; or

22.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within ten (10) Working Days;

22.1.6 an application is made in respect of the Contractor either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

22.1.7 if the Contractor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

22.1.8 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

22.1.9 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:

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

("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

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

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

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

23 TERMINATION ON DEFAULT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.4 If the Authority fails to pay the Contractor undisputed sums of money after thirty (30) days of having received a valid invoice, the Contractor shall notify the Authority in writing of such

failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 14 (Recovery of Sums Due) of this Schedule 2.

24 TERMINATION FOR BREACH OF THE REGULATIONS

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

25 CONSEQUENCES OF EXPIRY OR EARLIER TERMINATION

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

- 25.2 Save as otherwise expressly provided in the Contract:

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

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

26 DISRUPTION

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

27 RECOVERY UPON EXPIRY OR EARLIER TERMINATION OF THE CONTRACT

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

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

28 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

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

28.3 Without prejudice to its right under Clause 14 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

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

28.5 In the event that:

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

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

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

29 WAIVER AND CUMULATIVE REMEDIES

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

29.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 38 (Service of Notices and Communications) of this Schedule 2.

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

29.4 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately,

and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

30 PUBLICITY

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

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

30.1.2 use the Authority's name or brand in any promotion or marketing or announcement, without the prior written consent of the Authority.

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

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

31 OFFICIAL SECRETS ACTS AND FINANCE ACT

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

31.1.1 the Official Secrets Acts 1911 to 1989; and

31.1.2 section 182 of the Finance Act 1989.

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

32 PREVENTION OF FRAUD AND BRIBERY

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

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