

THIS AGREEMENT is made

BETWEEN: -

(1) **AYRSHIRE COLLEGE** whose registered office is at Dam Park, Ayr KA8 0EU (the "**Purchaser**");

and

(2) the company name on the purchase order (the "**Contractor**").

(each a "**Party**" and together the "**Parties**")

BACKGROUND:

- (A) The Purchaser wishes to purchase good and/or services.
- (B) The Contractor supplies these good and/or services.
- (C) The Purchaser selected the Contractor to supply it with the goods and/or services.
- (D) The Parties each agree to be bound by the terms of this agreement (the "Agreement") in respect of the Contractor's supply of the goods and/or services to the Purchaser.

1. INTERPRETATION

1.1 In the Agreement, unless the context otherwise requires:

- 1.1.1 capitalised terms shall have the meanings given to them in Schedule 1;
- 1.1.2 the singular includes the plural and vice versa;
- 1.1.3 a reference to one gender includes references to all other genders;
- 1.1.4 a reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.1.5 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted by any subsequent statute, enactment, order, regulation or instrument;
- 1.1.6 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
- 1.1.7 any reference to a document shall include any variation, amendment, or supplement to such document;
- 1.1.8 an obligation to do something includes an obligation to procure it to be done;

- 1.1.9 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 1.1.10 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.1.11 headings are included in this agreement for ease of reference only and do not affect the interpretation or construction of this Agreement; and
- 1.1.12 If more than one person is detailed in the Agreement as the Contractor, references to the "Contractors" shall be interpreted and construed as each such person on a joint and several basis.

2. SUPPLY OF GOODS

2.1 The Goods shall:

- 2.1.1 be to the reasonable satisfaction of the Purchaser;
- 2.1.2 conform in all respects with the requirements of the Agreement;
- 2.1.3 be of sound materials, workmanship and design;
- 2.1.4 conform in all respects with all relevant Laws;
- 2.1.5 be fit for the purpose for which such goods are ordinarily used;
- 2.1.6 be fit for any particular purpose made known to the Contractor;
- 2.1.7 conform with and be of the exact kind, model, type or variety as the samples or demonstration equipment if samples have been submitted or equipment has been demonstrated (whether before or after the entering into of this Agreement);
- 2.1.8 be free from defects in design, material and workmanship and remain so for the Warranty Period; and
- 2.1.9 to the extent the Goods comprise websites and apps, comply with Web Content accessibility Guidelines 2.1 AA standard.

2.2 The Contractor shall:

- 2.2.1 use the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods;
- 2.2.2 ensure packaging material used is designed and produced in such a way as to facilitate its re-use or recycling;
- 2.2.3 avoid or minimise the use of any hazardous substance in the packaging material;
- 2.2.4 manufacture, pack and supply the Goods in accordance with all generally accepted industry standard practices that are applicable; and

- 2.2.5 comply with all relevant Laws in relation to the packaging of the Goods.
- 2.3 The rights of the Purchaser under this Agreement in relation to Goods shall apply to Goods as originally delivered, and to Goods repaired or replaced pursuant in connection with this Agreement.
- 2.4 Goods repaired or replaced pursuant to this Agreement shall be deemed to be delivered and put into service on the date of repair or replacement, and accordingly shall be guaranteed for a further Warranty Period.
- 2.5 Unless expressly provided to the contrary in this Agreement, all pallets, containers, cases and other transit or packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-returnable to the Contractor.
- 2.6 Without prejudice to Clause 2.5, within 5 days of a demand by the Purchaser, the Contractor will uplift all pallets, containers, cases and other transit or packaging materials used in relation to the Goods. If the Contractor fails to so uplift such materials then, without prejudice to the Purchaser's other rights and remedies, the Purchaser may destroy, re-cycle, dispose of or re-use them.
- 2.7 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition, in English:
- 2.7.1 prominent and adequate warnings;
- 2.7.2 a full description of the Goods;
- 2.7.3 a full description of the hazardous nature of the Goods; and
- 2.7.4 procedures to be followed in the event of an emergency.

3. DELIVERY OF GOODS

- 3.1 Unless otherwise agreed in writing between the Purchaser and the Contractor, delivery of goods shall be made at such times and locations as the Agreement specifies.
- 3.2 Delivery of Goods will be complete when such Goods are unloaded at the delivery location specified in the Agreement.
- 3.3 The time and date of delivery is of the essence.
- 3.4 Unless the Agreement provides expressly to the contrary, delivery shall be free of charge to the Purchaser.
- 3.5 Property and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 3.2.
- 3.6 The transfer of property to and risk in the Goods shall be without prejudice to any rights of the Purchaser in relation to the Goods, including its right to reject Goods pursuant to the Agreement.

- 3.7 With each delivery of Goods, the Contractor will provide a delivery note providing particulars of the quantities, weights (on a package by package basis), batch codes and descriptions of the Goods delivered, and such other information reasonably specified by the Purchaser in advance of delivery.
- 3.8 All Goods of a kind that customarily or in accordance with Good Industry Practice bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, or other device intact.
- 3.9 The batch codes disclosed on delivery notes must tally with information recorded by the Contractor about its manufacturing, purchasing or Sub-Contracting processes to allow rapid checks to be made by the Purchaser on its stocks of Goods in the event of a series of complaints about the Goods or a product recall.

4. ACCEPTANCE TESTING, INSPECTION AND REJECTION OF GOODS

- 4.1 The Contractor shall carry out the first Acceptance Tests on the date and at the time set out in the Agreement. If no dates and times are set out in the Agreement the Contractor shall carry out the first Acceptance Tests as soon as possible after delivery of the relevant Goods, on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.
- 4.2 Unless otherwise specified in the Agreement, it shall be for the Contractor to provide at its cost the equipment, labour and other requirements necessary to carry out all Acceptance Tests. The Purchaser shall be entitled to be present at all Acceptance Tests.
- 4.3 Where the Contractor fails to carry out any Acceptance Tests on the agreed date and at the agreed time, the Purchaser shall be entitled, at its option:
- 4.3.1 to itself carry out those Acceptance Tests, and the Contractor shall reimburse the Purchaser for the reasonable costs associated with such Acceptance Tests; or
 - 4.3.2 to reject the Goods by notice in writing to the Seller and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 4.4 If, pursuant to Clause 4.1, the Goods pass the Acceptance Tests, the Contractor shall issue a notice in writing to the Purchaser to that effect. If, pursuant to Clause 4.3.1, the Goods pass the Acceptance Tests, the Purchaser shall issue a notice in writing to the Contractor to that effect.
- 4.5 If the Goods or any part of them fail to pass the first Acceptance Tests:
- 4.5.1 the Contractor shall within 7 days of the failure or election take such steps at its own cost as are required to ensure that the Goods will pass the Acceptance Tests (including repair, adjustment and/or replacement as the case may be); and
 - 4.5.2 by not later than the end of the 7 day period shall Re-Test on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.

- 4.6 If on any Re-Test the Goods or any part of them fail to pass the Acceptance Tests, the Purchaser shall be entitled, at its option:
- 4.6.1 to elect that there should be a further Re-Test in which case the Contractor shall comply with Clause 4.5; or
 - 4.6.2 to reject the Goods by notice in writing to the Contractor and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.
- 4.7 The rights of the Purchaser in this Section shall apply:
- 4.7.1 without prejudice to its other rights and remedies; and
 - 4.7.2 to Goods as originally delivered, and to Goods repaired, adjusted or replaced pursuant to this Section.
- 4.8 The signature or acceptance of a delivery note by the Purchaser will not constitute evidence of acceptance of the Goods.
- 4.9 The Purchaser may, by written notice to the Contractor at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Agreement, or Goods in a consignment which is deficient in weight, quantity or measure.

5. SUPPLY OF SERVICES

- 5.1 Where the Agreement provides for the Services to:
- 5.1.1 commence on a certain date;
 - 5.1.2 be completed by a certain date; or
 - 5.1.3 be provided for a certain period,
- the Contractor will comply with such requirements.
- 5.2 The Contractor shall:
- 5.2.1 perform the Services and provide any Deliverables to meet or exceed the Service Levels set out in the Agreement;
 - 5.2.2 ensure that the Services and Deliverables will conform in all respects with the Service Levels set out in the Agreement;
 - 5.2.3 to the extent the Services comprise digital services, websites and apps, comply with Web Content accessibility Guidelines 2.1 AA standard.
 - 5.2.4 ensure that the Services and Deliverables will be fit for any purpose expressly or implicitly made known to the Contractor by the Purchaser;
 - 5.2.5 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;

- 5.2.6 ensure that all Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 5.2.7 co-operate with the Purchaser in all matters relating to the Services, and comply with the Purchaser's reasonable instructions;
 - 5.2.8 before the date on which the Services are to start, obtain and at all times, maintain during the Period, all necessary licences and consents and comply with all applicable Laws in relation to the Services;
 - 5.2.9 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Purchaser's premises from time to time and that have been communicated to it;
 - 5.2.10 hold all Purchaser Materials in safe custody at its own risk and maintain the Purchaser Materials in good condition until returned to the Purchaser; and
 - 5.2.11 not dispose of or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisations.
- 5.3 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the Purchaser as to the order in which the Services will be provided.
- 5.4 The Contractor will provide, at the reasonable request of and in such form as the Purchaser may require, reports showing the progress of the provision of the Services, the costs to the Purchaser of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Agreement.
- 5.5 The Contractor agrees to immediately notify the Purchaser if it believes that it may be unable to achieve any particular Milestone. If the Contractor fails to achieve any Milestone on or by the relevant date other than due to a delay caused by the Purchaser that has been notified in writing by the Contractor to the Purchaser as soon as reasonably practicable, a Force Majeure event or where an extension of time is agreed by the Parties, then the Purchaser will have the right (without prejudice to all other rights and remedies available to it under these conditions or otherwise), at its discretion, to deduct by way of liquidated damages (and as a genuine pre-estimate and not by way of penalty) from any amounts payable to the Contractor, the amount set out in the particular Order Form (which shall be calculated in accordance with the anticipated cost to the Purchaser of such failure) for each week or part of a week that the achievement of the Milestone is overdue.
- 5.6 To the extent any Professional Services are to be supplied in accordance with the Agreement:
- 5.6.1 the Purchaser shall be entitled to rely upon the Deliverables;
 - 5.6.2 the Contractor may issue Deliverables in draft form, but if requested to do so the Contractor may not unreasonably refuse to issue a draft Deliverable in final form, nor unreasonably delay that issue;

- 5.6.3 the Contractor acknowledges that it shall have no right to be identified as the author of any Deliverable, and hereby waives any such rights conferred by law; and
 - 5.6.4 to the extent the Contractor's compliance with the provisions of the Agreement would be inconsistent with the Contractor's obligations under Law or owed to any regulatory body exercising jurisdiction over the supply of the relevant Professional Services ("**Regulatory Requirements**"), and the affected provisions of the Agreement are identified in an Order Form as being not applicable or subject to variation to no greater degree than necessary to meet the Regulatory Requirements, such provisions shall be of no effect.
- 5.7 The Contractor shall have an ongoing obligation throughout the Agreement Period to identify new or potential improvements to the Services and promptly notify the Purchaser of such improvements.

6. REMEDIES

- 6.1 In connection with Defective Goods and Defective Services, the Purchaser may choose to, without prejudice to the Purchaser's other rights and remedies:
- 6.1.1 have Defective Goods repaired by the Contractor at the Contractor's expense, without delay (and in any event within 7 days of the Rejection Notice), so as to meet in all respects the requirements of the Agreement;
 - 6.1.2 have any Defective Goods replaced by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the Rejection Notice, with Goods which comply in all respects with the requirements of the Agreement;
 - 6.1.3 require, without undue delay, re-performance or completion of the Defective Services at no additional charge to the Purchaser;
 - 6.1.4 terminate the Agreement in whole or only as regards the Defective Goods or Defective Services, and be released from all payment obligations in relation to Defective Goods or Defective Services, obtaining from the Contractor, without delay, a full refund of the sums already paid in respect of the Defective Goods or Defective Services; and
 - 6.1.5 claim damages from the Contractor for any costs, expenses or losses resulting from the Contractor's failure to properly manufacture and deliver the Goods or perform the Services in accordance with the Agreement (including, without limitation, the reasonable costs incurred in obtaining substitute goods or services from a different supplier).
- 6.2 The Purchaser's rights and remedies as regards Defective Goods shall be unaffected if the loss or damage occurred in the transit of the Goods.
- 6.3 Except as otherwise expressly provided in the Agreement:
- 6.3.1 all remedies available to a Party under the Agreement are cumulative and may be exercised concurrently or separately; and

6.3.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

7. PAYMENT

7.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Agreement.

7.2 The Contractor shall issue invoices to the Purchaser in accordance with the Pricing Matrix. The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor.

7.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.

7.4 All Charges are stated in pounds sterling, and all invoices must be presented and demanded in pounds Sterling.

7.5 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Agreement, and except as otherwise expressly stated to the contrary in the Agreement, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.

7.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and the consolidation or splitting of invoices to reflect different parts of the performance of the obligations of the Agreement (including delivery to different locations and/or performance for the ultimate benefit of different persons).

7.7 The Contractor shall ensure that its Sub-Contracts all contain a clause:

7.7.1 notifying the Sub-Contractor that the Sub-Contract forms part of a larger contract for the benefit of the Purchaser and, if the Sub-Contractor has any difficulty in securing timely payment of an invoice, that matter may be referred to the Purchaser by the Sub-Contractor;

7.7.2 requiring the Contractor to pay the relevant Sub-Contractor without deduction and not more than 30 days after the receipt of a valid and payable invoice unless the Contractor is exercising a right of retention or set-off in respect of a breach of the Sub-contract by the relevant Sub-Contractor; and

7.7.3 in the same terms as that set out in this clause 7.7 (including, for the avoidance of doubt, this clause 7.7.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and Sub-Contractor as the case may be

7.8 The Parties will pay interest on any amount payable under the Agreement not paid on the due date, for the period from that date to the date of payment at a rate equal to 3% above the base rate set from time to time by the Bank of England.

- 7.9 The Contractor is requested to address complaints regarding the late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to procurement@ayrshire.ac.uk
- 7.10 The Contractor shall, at least once quarterly and more frequently on request, provide the Purchaser with all such information as the Purchaser may reasonably require to ensure the Contractor and any Sub-Contractors have complied with the requirements of clause 7.7

8. WARRANTIES AND REPRESENTATIONS

- 8.1 The Contractor warrants and represents to the Purchaser that:
- 8.1.1 the Contractor has full capacity and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the Agreement;
 - 8.1.2 to the best of its knowledge there is no inhibition, restriction or prohibition which in any way affects the capacity of the Contractor to enter into and perform the Agreement;
 - 8.1.3 the Contractor shall discharge its obligations under the Agreement in accordance with Good Industry Practice;
 - 8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading and it will promptly advise the Purchaser and Purchaser of any fact, matter or circumstance of which it may become aware during the Agreement that would render any such information, statement or representation to be false or misleading;
 - 8.1.5 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 that will or might affect its ability to perform its obligations under the Agreement;
 - 8.1.6 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; and
- 8.2 The Contractor shall comply with all Laws which are relevant to the Agreement and the performance thereof.

9. CONFLICT OF INTEREST

- 9.1 Where the Agreement is one for the provision of Professional Services, the Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Agreement, and:
- 9.1.1 where the Contractor becomes aware of any conflict of interest during the performance of the Agreement (whether the conflict existed before the

award of the Agreement or arises during its performance) it shall immediately notify the Purchaser in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Purchaser may reasonably require;

9.1.2 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 9.1.1 is not capable of being avoided or removed the Purchaser may terminate the Agreement forthwith by notice in writing to the Contractor.

9.1.3 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 9.1.1 is capable of being avoided or removed the Purchaser may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

(a) if the Contractor fails to comply the Purchaser's requirements in this respect, or

(b) if, in the opinion of the Purchaser, compliance does not avoid or remove the conflict,

the Purchaser may terminate the Agreement forthwith by notice in writing to the Contractor; and

9.1.4 if the Agreement is terminated pursuant to Clause 9.1.2 and, in the Purchaser's reasonable opinion, the relevant conflict of interest existed at the time of the award of the Agreement and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in the Tender, then notwithstanding Clause 38 (Consequences of Termination), no payment shall be due for any Services provided by the Contractor.

10. CONFIDENTIALITY

10.1 The Confidential Information shall not:

10.1.1 be used by the Contractor other than for the purposes of this Agreement;
or

10.1.2 be disclosed by the Contractor, other than to those Contract Workers who need to have access to that information for the purposes of the Agreement and who are bound by written obligations of confidentiality no less onerous than those set out in this Clause 10.

without the prior written consent of the Purchaser.

10.2 Clause 10.1 shall not apply to any Confidential Information which:

10.2.1 was generally available to the public at the time of the Purchaser's disclosure to the Contractor;

10.2.2 becomes generally available to the public other than as a result of a breach by the Contractor of Clause 10.1;

- 10.2.3 was known to the Contractor prior to its disclosure to the Contractor by the Purchaser;
 - 10.2.4 comes into the Contractor's possession from a third party not under any duty of confidence to the Purchaser in respect of that information;
 - 10.2.5 the Contractor is obliged by law to disclose provided that, in the case of a request for disclosure under the Information Legislation, the Contractor will not disclose any Confidential Information without first using reasonable endeavours to consult the Purchaser on the disclosure; or
 - 10.2.6 the Contractor requires to provide to its insurers or professional advisers to allow the Contractor to properly conduct its business.
- 10.3 The Contractor will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than as permitted by Clauses 10.1 and 10.2.
- 10.4 Upon the expiry or termination of the Period, the Contractor will promptly, and in any event within 14 days of such expiry or termination, return to the Purchaser or destroy (at the absolute discretion of the Purchaser) any Confidential Information in its possession, and provide the Purchaser with a certificate, signed by a duly authorised officer, certifying that the Contractor has complied with its obligations under this Clause 10.4. The obligation to destroy any Confidential Information pursuant to this Clause 10.4 includes an obligation to permanently delete Confidential Information from any information technology systems owned and/or used by the Contractor, any copies of that Confidential Information held in electronic form. Notwithstanding the foregoing provisions of this Clause 10.3, the Contractor shall be entitled to retain Confidential Information to the extent it is required to do so for regulatory reasons or for compliance with Law.
- 10.5 Nothing in this Clause 10 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Agreement to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.
- 10.6 The Contractor must immediately notify the Purchaser of any breach of security concerning the Confidential Information.
- 10.7 The Contractor acknowledges that the Purchaser may publish and make available a copy of the Agreement when required to do so by applicable law or in accordance with its own internal procedures.
- 10.8 Notwithstanding expiry or termination of the Agreement, the obligations contained in this Clause 10 shall continue in full force in perpetuity following the Period.

11. FREEDOM OF INFORMATION

- 11.1 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its obligations under the Information Legislation including by providing the Purchaser

with a copy of any information which it is holding on behalf of the Purchaser in the form that the Purchaser specifies within 7 days of a request from the Purchaser to that effect.

- 11.2 The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including any information provided to it by the Contractor or which relates in any way to the Contractor or the Agreement. In particular, the Purchaser will be entitled to determine at its absolute discretion whether, even if it is not required to disclose or otherwise publish information under the Information Legislation, it would nevertheless be in the public interest to do so.

12. DATA PROTECTION

- 12.1 The Purchaser and the Contractor shall each comply with their respective obligations under the Data Protection Laws.
- 12.2 Both Parties agree to negotiate in good faith any such amendments to the Agreement as may be required to ensure that both Parties are compliant with their obligations under the Data Protection Laws.
- 12.3 The Contractor will provide the Purchaser with contact details for its data protection officer or equivalent individual with responsibility for data protection and privacy, to act as a point of contact regarding data protection and privacy obligations.
- 12.4 The Personal Data to be Processed and the details of the Processing to be undertaken under the Agreement is detailed in the Order Form.
- 12.5 Without prejudice to the meaning afforded to each Party under the Data Protection Laws, the intention of the Parties is that in respect of any Personal Data Processed by the Contractor under this Agreement, the Purchaser shall be the Data Controller and the Contractor shall be a Data Processor.
- 12.6 The Contractor shall (and shall ensure that its Contract Workers shall):
 - 12.6.1 implement and maintain appropriate technical and organisational measures and safeguards for protection of Personal Data, to ensure the rights of Data Subjects are protected and to ensure that processing will meet the requirements of Data Protection Laws;
 - 12.6.2 ensure that all employees and Sub-Contractors authorised to Process Personal Data are subject to binding confidentiality obligations in respect of that Personal Data;
 - 12.6.3 assist the Purchaser, using appropriate technical and organisational measures, to respond to requests from Data Subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;
 - 12.6.4 assist the Purchaser in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Laws, taking into account the nature of Processing and information available to the Contractor;

- 12.6.5 at the Purchaser's election, delete or return all Personal Data and existing copies to the Purchaser (unless Data Protection Laws require the Contractor to store that Personal Data);
 - 12.6.6 make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the Purchaser's mandated auditor, to demonstrate the Contractor's compliance with its obligations under the Agreement;
 - 12.6.7 without delay inform the Purchaser if, in the Contractor's opinion, any instruction given by the Purchaser to the Contractor infringes Data Protection Laws;
 - 12.6.8 maintain a written record of all Processing activities under its responsibility and of all categories of Processing activities carried out on behalf of the Purchaser, that satisfies the requirements of the Data Protection Laws;
 - 12.6.9 cooperate on request with any relevant UK, European Union or member state supervisory Purchaser;
 - 12.6.10 notify the Purchaser without undue delay after becoming aware of a breach of Personal Data and notify the Purchaser immediately if it is asked to do something infringing the Data Protection Laws or other data protection law of the EU or a member state;
 - 12.6.11 take any further action and execute any further documents and amendments to the Agreement as may, in the Purchaser's reasonable opinion, be required to comply with Data Protection Laws;
 - 12.6.12 only process Personal Data in accordance with the Purchaser's documented written instructions consistent with and in the scope of this Agreement (unless required to do so by applicable law, in which case the Contractor shall inform the Purchaser of that legal requirement unless prohibited by Law);
 - 12.6.13 only engage another Data Processor to carry out specific processing activities with prior specific or general written authorisation of the Purchaser, and only where that other Data Processor is subject to a written contract imposing on that other Data Processor the same data protection obligations as are imposed on the Contractor in this Agreement;
 - 12.6.14 not Process or transfer Personal Data outside the United Kingdom and the European Economic Area except with the express prior written consent of the Purchaser; and
 - 12.6.15 nothing within this Agreement relieves the Contractor of its own direct responsibilities and liabilities under the Data Protection Laws.
- 12.7 The Contractor agrees that the technical and organisational measures referred to in Clause 12.6.1 above shall ensure a level of security appropriate to the risk, taking into account:
- 12.7.1 the state of the art, the costs of implementation;

- 12.7.2 the nature, scope, context and purposes of Processing and risks of varying likelihood; and
- 12.7.3 severity for the rights and freedoms of individuals.
- 12.8 The Contractor agrees that the technical and organisational measures to be implemented by them and as referred to in Clause 12.6.1 above shall include, as appropriate: -
 - 12.8.1 pseudonymisation and encryption of Personal Data;
 - 12.8.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - 12.8.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - 12.8.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

13. INTELLECTUAL PROPERTY

- 13.1 The Contractor must not infringe any Intellectual Property Rights of any third party in the performance of the Agreement.

14. ACCESS TO PREMISES

- 14.1 If the Agreement requires the Contractor to take access to or occupation of any Premises in connection with the Agreement, such access or occupation shall be made available to the Contractor free of charge.
- 14.2 The Contractor will not deliver any Goods, materials, plant or equipment, and will not commence any work at the Premises, until it has obtained the Purchaser's prior consent to the date and time of access, and, where appropriate, as to the proposed method of working or delivery (to the extent that such access details are not included within the Agreement).
- 14.3 The Premises shall be used by the Contractor solely for the purpose of performing the Agreement.
- 14.4 The Contractor shall have access to or occupation of the Premises as non-exclusive licensee only and shall vacate the Premises on the earlier of: (i) the Premises no longer being required for the purpose of performing the Agreement; or (ii) termination or expiry of the Agreement.
- 14.5 All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Agreement shall be and remain at the sole risk of the Contractor, whether or not they are situated at any Premises.
- 14.6 If requested the Contractor shall provide a list of the names and addresses of all Contract Workers who may require admission to the Premises in connection with

the performance of the Agreement, containing such other particulars as the Purchaser may reasonably require.

- 14.7 The Purchaser may refuse to admit to the Premises any Contract Worker whose admission would be, in the opinion of the Purchaser, undesirable.
- 14.8 The Contractor shall comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Purchaser in relation to the access to and use of the Premises including security and health and safety requirements and occupation and cooperation with other users of the Premises.
- 14.9 If the Purchaser so directs, the Contractor will submit a basic Disclosure Certificate obtained from Disclosure Scotland in respect of any Contract Workers who requires access to any Premises, prior to such access being taken.

15. ISSUED PROPERTY

- 15.1 All Issued Property shall remain the property of the Purchaser and shall be used by the Contractor only for the purposes of the Agreement.
- 15.2 The Contractor shall notify the Purchaser without delay if any Issued Property is not in good condition when received by or on behalf of the Contractor.
- 15.3 The Contractor undertakes to keep safe custody of Issued Property and to return all Issued Property to the Contractor, with the exception of any Issued Property consumed or incorporated for the purposes of the Agreement.
- 15.4 The Contractor will return all Issued Property on demand, at any time, and within 7 days of the termination or expiry of the Agreement. To the extent that Issued Property includes working papers or other written materials, at the same time as the Contractor returns such Issued Property it shall also return copies it has made of such Issued Property and any other materials of whatsoever nature prepared by the Contractor using the information in such Issued Property.
- 15.5 Neither the Contractor nor any other party shall have a lien on any Issued Property and the Contractor shall take all reasonable steps to ensure that the title of the Purchaser to and the exclusion of any such lien in respect of Issued Property are brought to the notice of all persons dealing with any Issued Property.

16. AUDIT ACCESS

- 16.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records, all for the purposes of enabling the Purchaser or the Auditors:

16.1.1 to carry out an audit of the Contractor's compliance with the Agreement;

- 16.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Agreement;
 - 16.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or
 - 16.1.4 to conduct any audit or investigation by Audit Scotland or any other auditor.
- 16.2 The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.
- 16.3 Without prejudice to Clause 16.1 in the event of an investigation into suspected fraudulent activity or other impropriety by any Contractor Party or Contract Worker:
- 16.3.1 the Purchaser and/or the Auditors may enter any premises of any Contractor Party and take access to the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Contractor or Contractor Party provided that save in cases of emergency, actual or reasonably suspected material Default on the part of the Contractor or instruction of any regulatory body, the Purchaser and/or the Auditors shall provide reasonable advance notice (of not less than 5 Working Days) that it wishes to exercise the foregoing right;
 - 16.3.2 the Contractor shall render all necessary assistance to the conduct of such investigation (including the provision of office accommodation and the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records or any other subject of investigation or enquiry by the Purchaser or the Auditors); and
 - 16.3.3 the Contractor shall be paid any reasonable expenses properly and necessarily incurred in giving such necessary assistance in the event that the result of such investigation is that no fraudulent activity or other impropriety by a Contractor Party or a Contract Worker is found (but not otherwise).
- 16.4 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 16.1 causes the minimum amount of disruption to the business of the Contractor.

17. CONTRACT WORKERS

- 17.1 The Contractor shall engage, employ, and train suitably experienced and qualified Contract Workers to perform Contractor's duties and obligations under the Agreement.
- 17.2 On request, the Contractor will provide the Purchaser with the names of all proposed Contract Workers together with a description of the part each Contract Worker will play in performing the Agreement, and details of their qualifications, experience and previous employment.
- 17.3 On request, the Contractor will provide the Purchaser with documentary or other evidence to establish that the Contract Workers are suitably qualified and experienced to perform their respective duties under the Agreement.

- 17.4 If the Purchaser gives the Contractor notice that any Contract Worker proposed Contract Worker is not to become or remain involved in the performance of the Agreement, the Contractor will take all reasonable steps to comply with such notice without delay, at the Contractor's cost.
- 17.5 Nothing in the Agreement shall have the effect of making any Contract Worker an employee of the Purchaser.

18. KEY PERSONNEL

- 18.1 The Contractor shall appoint an Account Manager to be the representative of the Contractor for all purposes connected with the delivery of the Agreement, and who shall be authorised by the Contractor to fulfil that role.
- 18.2 The Purchaser may at any time by notice to the Contractor designate any Contract Worker as "Key Personnel". Any person referred to in the Agreement or the Contractor's response to the Invitation to Tender as to be concerned with the delivery of the Agreement and the Account Manager referred to in Clause 18.1 will be deemed so designated.
- 18.3 The Contractor will ensure that the Key Personnel are made available in performance of the Agreement, unless the Purchaser agrees otherwise. The Purchaser will act reasonably in considering requests for replacements to the Key Personnel where the need for the replacement has arisen due to circumstances beyond the control of the Contractor. If the Contractor proposes a replacement for any person designated as Key Personnel, the Purchaser reserves the right to interview any such person before considering agreeing to the replacement.
- 18.4 If the Purchaser refuses its consent for any replacement Key Personnel the Contractor will propose an alternative, without undue delay.

19. NON-SOLICITATION OF EMPLOYEES

- 19.1 Without in any way restricting the right of any person freely to accept employment and change employment, neither the Purchaser nor the Contractor shall, during the Period and for the period of 6 months thereafter, without the other Party's written consent:
- 19.1.1 subject to Clause 19.2, employ any of the employees of the other Party who have at any time been engaged in the performance of the Agreement to perform similar duties to those involved in the performance of the Agreements; or
 - 19.1.2 solicit to employment any such employees of the other Party.
- 19.2 A Party shall not be in breach of Clause 19.1 if a person (without having been previously approached directly or indirectly) responds to a general recruitment advertisement placed by or on behalf of the prospective new employer.

20. STAFF TRANSFER AT COMMENCEMENT

- 20.1 The Contractor and the Purchaser agree that the commencement of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Incoming Employees.
- 20.2 The Contractor, and any Affiliate of the Contractor or a Sub-Contractor, shall use reasonable endeavours to organise its workforce so that there is not an organised grouping of employees whose principal purpose is to carry out the services on behalf of the Purchaser.
- 20.3 The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions, accrued by untaken holiday pay and pension contributions) which are attributable in whole or in part to the period from the date of the Incoming Relevant Transfer, including bonuses or commission which are payable on or before the date of the Incoming Relevant Transfer but attributable in whole or in part to the period from the date of the Incoming Relevant Transfer.

21. INFORMATION ABOUT EMPLOYEES

- 21.1 The Purchaser may at any time by Notice require the Contractor to disclose such information as the Purchaser may require to the Purchaser or, at the direction of the Purchaser, to any prospective Replacement Contractor relating to the manner in which the Services are organised or information about any employee who is wholly or mainly assigned to carrying out activities in provision of the Services whether employed by the Contractor or Affiliate of the Contractor or a Sub-Contractor ("**Assigned Employee**"). The information required by the Purchaser about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 21.2 The Contractor must disclose by Notice all such information as is required by the Purchaser under Clause 21.1, within such reasonable period specified by the Purchaser. The Contractor acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.
- 21.3 The Contractor warrants for the benefit of the Purchaser and any Replacement Contractor that all information provided pursuant to this Clause 21 shall be true and accurate in all material respects at the time of providing the information. The Purchaser may at any time require the Contractor to confirm whether information provided under this Clause 21 remains true and accurate in all material respects or ask it to provide updated information.
- 21.4 The Purchaser shall be permitted to use and disclose the information provided by the Contractor under this Clause 21 for the purpose of informing any prospective Replacement Contractor.

22. TRANSITION AND ACCEPTANCE

- 22.1 During the Transition Period the Contractor will:

- 22.1.1 ensure that all Contract Workers have received the training necessary to allow the Contractor to perform the Agreement from the Commencement Date;
 - 22.1.2 prepare draft procedural instructions to be issued to all Contract Workers in connection with the Agreement, and submit the draft to the Purchaser for approval (which will not be unreasonably withheld);
 - 22.1.3 issue procedural instructions as approved by the Purchaser to all Contract Workers in advance of the Commencement Date; and
 - 22.1.4 comply with its obligations pursuant to the Transition Plan.
- 22.2 During the Transition Period the Purchaser will use its reasonable endeavours to comply with its obligations pursuant to the Transition Plan.
- 22.3 The Conditions will apply to the Transition Period from the commencement of that period, notwithstanding that this is prior to the Commencement Date.

23. SYSTEM TRIALS DURING LEAD-IN PERIOD

- 23.1 During the Transition Period, the Contractor shall, at its own expense, conduct system trials and testing in relation to the Goods and/or Services required for the performance of its obligations pursuant to the Agreement in accordance with any reasonable instructions which the Purchaser may give including as to the time and location of the trials and tests. The Purchaser may attend and monitor the system trials and testing.
- 23.2 Within 7 days of each event of system trials and testing, the Contractor shall report to the Purchaser as to the results, in such form and containing such information as the Purchaser may reasonably require.
- 23.3 If the system trials and testing are not completed to the reasonable satisfaction of the Purchaser:
- 23.3.1 before the Commencement Date, the Contractor may carry out the system trials and testing on any number of occasions prior to the Commencement Date in accordance with the provisions of this Clause 23.3; and
 - 23.3.2 by the Commencement Date, the Purchaser may (without prejudice to any other right or remedy which it may have):
 - 23.3.2.1 notify the Contractor of a revised Commencement Date to allow the Contractor additional time to complete the system trials and testing to the reasonable satisfaction of the Purchaser; or
 - 23.3.2.2 terminate the Agreement with immediate effect by giving written notice of termination to the Contractor in which case the Purchaser shall have no liability in respect of any costs or expenses incurred by the Contractor arising out of or in connection with the Agreement including the performance of the system trials or testing (and the

termination will be deemed to have been effected pursuant to Clause 37 of the Agreement.

- 23.4 The Purchaser will notify the Contractor when the completion of the system trials and testing has been carried out to the reasonable satisfaction of the Purchaser, but such completion will not constitute evidence that any Goods have been accepted by the Purchaser nor that they are fit for purpose or otherwise in accordance with the requirements of the Agreement.
- 23.5 After the completion of the system trials and testing to the reasonable satisfaction of the Purchaser, the Contractor may not use alternative Goods in the delivery of the Services (or provide alternative Goods) in performance of the Agreement without the prior written consent of the Purchaser. In considering a request for consent, the Purchaser may ask for all reasonable information concerning the reason for the request and as regards the proposed alternatives, and may require system trials and testing to be carried out in respect of the proposed alternatives, prior to making its decision as to whether to grant or withhold its consent.

24. STAFF TRANSFER ON EXPIRY OR TERMINATION

- 24.1 The Contractor and the Purchaser agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.2 The Contractor shall comply and shall procure that each Affiliate of the Contractor and each Sub-Contractor shall comply with all of its obligations under TUPE and shall perform and discharge and procure that each Affiliate of the Contractor and each Sub-Contractor shall perform and discharge all its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Outgoing Relevant Transfer.
- 24.3 The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions, accrued but untaken holiday pay and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Outgoing Relevant Transfer (including bonuses or commission which are payable after the date of the Outgoing Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.4 The Contractor shall and shall procure that each Affiliate of the Contractor and each Sub-Contractor shall promptly provide to the Purchaser and any Replacement Contractor in writing such information (including, but not limited to, Staffing Information and Employee Liability Information) as is necessary to enable the Purchaser and/or the Replacement Contractor as the case may be to carry out their respective duties under regulation 13 of TUPE.
- 24.5 The Contractor shall provide and shall procure that each Affiliate of the Contractor and each Sub-Contractor shall provide all reasonable co-operation and assistance to the Purchaser and any Replacement Contractor to ensure the smooth transfer of the Outgoing Employees including without prejudice to the foregoing generality providing sufficient information in advance of the date of the Outgoing Relevant

Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.

24.6 The Contractor warrants to the Purchaser that during the period of 6 months immediately prior to the expiry of the Period it will not (and will ensure that any Affiliate of the Contractor and any Sub-Contractor will not) without the prior consent of the Purchaser:

24.6.1 increase the total employment costs of the Assigned Employees in any material way;

24.6.2 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt pay) of any Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services;

24.6.3 terminate or give notice to terminate the employment or engagement of any Assigned Employee other than in circumstances in which the termination is for reasons of misconduct or lack of capability;

24.6.4 transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:

24.6.4.1 was planned as part of the individual's career development;

24.6.4.2 takes place in the normal course of business; and

24.6.4.3 will not have any adverse impact upon the delivery of the Services by the Contractor provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; or

24.6.5 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services.

25. ANTI-CORRUPTION AND ANTI-BRIBERY

25.1 The Contractor shall not (and shall procure that no Contract Worker nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:

25.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Agreement; or

25.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Agreement or any other agreement.

25.2 The Contractor shall:

- 25.2.1 comply with the Relevant Requirements;
 - 25.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 25.2.3 have and shall maintain in place throughout the Period its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them;
 - 25.2.4 immediately notify the Purchaser if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
 - 25.2.5 ensure that all persons associated with the Contractor or other persons who are performing services in connection with the Agreement comply with this Clause 25; and
 - 25.2.6 within 2 months of the date of the Agreement, and annually thereafter, certify to the Purchaser in writing signed by an officer of the Contractor, compliance with this Clause 25 by the Contractor, its Affiliates, Contractor Parties, Sub-Contractors and Contract Workers. The Contractor shall provide such supporting evidence of compliance as the Purchaser may reasonably request.
- 25.3 For the purpose of this Clause 25, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 25 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.
- 25.4 In the event of any breach of this Clause 25 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor):
- 25.4.1 the Contractor shall immediately give the Purchaser full details of any such breach and shall co-operate fully with the Purchaser in disclosing information and documents which the Purchaser may request; and
 - 25.4.2 The Purchaser shall (without prejudice to any of its rights or remedies under the Agreement or otherwise) be entitled by notice in writing to terminate the Agreement immediately.
- 25.5 In exercising its rights or remedies under this Clause 25, the Purchaser shall:
- 25.5.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

25.5.2 give due consideration, where appropriate, to action other than termination of the Agreement, including:

25.5.2.1 requiring the Contractor to procure the termination of a Sub-Contract where the prohibited act is that of a Sub-Contractor; or

25.5.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor Party where the prohibited act is that of such employee.

26. ANTI-SLAVERY AND HUMAN TRAFFICKING

26.1 In performing its obligations under the Agreement, the Contractor shall:

26.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the Purchaser from time to time in force including the Modern Slavery Act 2015;

26.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

26.1.3 include in its contracts with its Sub-Contractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 26.

26.2 The Contractor represents and warrants that at the date of the Agreement:

26.2.1 neither the Contractor nor any of its officers, employees or other persons associated with it:

26.2.2 has been convicted of any offence involving slavery and human trafficking; and

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

26.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

26.4 The Contractor shall notify the Purchaser and the Purchaser as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement.

26.5 The Contractor shall:

26.5.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser in connection with the Agreement; and

- 26.5.2 permit the Purchaser and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this Clause 26.
- 26.5.3 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the anti-slavery laws.
- 26.5.4 The Purchaser may terminate the Agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the provisions of this Clause 26.

27. ANTI-FACILITATION OF TAX EVASION

27.1 The Contractor shall:

- 27.1.1 not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017; and
- 27.1.2 have and maintain in place throughout the term of the Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Contractor) and to ensure compliance with Clause 21.1; and
- 27.1.3 promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Agreement.

27.2 The Contractor shall ensure that any person associated with the Contractor who is performing Services and/ or providing Goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 27.

27.3 Breach of this Clause 27 shall be deemed a material breach of the Agreement and shall allow the Purchaser to terminate by written notice with immediate effect.

28. HEALTH & SAFETY

28.1 The Contractor shall be responsible for the observance by itself and all Contract Workers of all safety precautions necessary for the protection of all Contract Workers including all precautions relating to manual handling and all precautions required to be taken by or under Laws relating to health and safety.

28.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Agreement.

28.3 Where the Purchaser notified the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor or any

Contract Worker, the Contractor shall draw these hazards to the attention of all Contract Workers and shall instruct such persons in connection with any necessary associated safety measures.

29. NON-DISCRIMINATION

- 29.1 The Contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.
- 29.2 The Contractor shall notify the Purchaser and the Purchaser immediately of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 29.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.

30. ENVIRONMENTAL CONSIDERATIONS

- 30.1 The Contractor will ensure that:
 - 30.1.1 no Goods or Services are supplied which will endanger the health and safety of the end users of the Goods or Services (in each case assuming that such persons act reasonably); and
 - 30.1.2 no Goods are supplied which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.
- 30.2 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Agreement. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.

31. FORCE MAJEURE

- 31.1 Provided that the affected Party complies with this Clause 31, a Party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under the Agreement which is due to Force Majeure.
 - 31.1.1 If either Party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part, it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.

- 31.1.2 If a Party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part, it shall use its best endeavours to continue to perform, or resume performance of, its obligations under the Agreement as soon as possible.
- 31.1.3 In the event that the Contractor or the Purchaser is affected by a Public Health Event that is likely to affect its ability to perform its obligations under the Agreement or the commercial viability of the continuance of the Agreement, the Contractor and the Purchaser shall promptly discuss such Public Health Event. the reasonable instructions of the Purchaser regarding the Contractor's supply of Goods and Services and the Agreement.
- 31.1.4 If either Party is prevented from performance of its obligations under the Agreement for a continuous period in excess of 3 months by reason of Force Majeure, the other Party may terminate the Agreement immediately on service of written notice upon the Party so prevented.
- 31.1.5 The only events which shall afford relief from liabilities under the Agreement for failure or delay shall be any event constituting Force Majeure.

32. INDEMNITIES

- 32.1 Any Goods rejected pursuant to Clause 4.3.2 or 4.6.2 shall be removed by (and at the expense of) the Contractor within 7 days of the Rejection Notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.
- 32.2 Unless the Purchaser elects for Defective Goods to be repaired, and agrees to that repair taking place at the Premises, any rejected Goods shall be removed by (and at the expense of) the Contractor within 7 days of the Rejection Notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.
- 32.3 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of (i) any failure by the Contractor to comply with its obligations under the Data Protection Laws; or (ii) any breach by the Contractor of Clause 12.
- 32.4 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with any breach (whether actual or alleged) by the Contractor of Clause 13.1.
- 32.5 The Contractor shall indemnify the Purchaser in respect of all losses of or damage to Issued Property (including waste of Issued Property) arising from bad workmanship or negligence of the Contractor) save for any losses or damage

resulting from the normal and proper use of Issued Property for the purposes of the Agreement.

- 32.6 If the Contractor breaches Clause 19.1 it shall indemnify the Purchaser in respect of that Party's costs and expenses in replacing the employee employed by the Purchaser including advertising and other recruitment costs and initial training (but not the cost of ongoing emoluments).
- 32.7 The Contractor indemnifies the Purchaser, the Replacement Contractor and the Incoming Employees' former employer against all Employee Liabilities which the Purchaser, any Replacement Contractor and/or the Incoming Employees' former employer may incur in respect of any breach by the Contractor of Clause 20.3.
- 32.8 The Contractor indemnifies the Purchaser against and all Employee Liabilities which the Purchaser may suffer as a result of or in connection with:
- 32.7.1 any failure by the Contractor to comply with its obligations pursuant to TUPE in respect of the Incoming Employees; and
- 32.7.2 anything done or omitted to be done by the Contractor in respect of any of the Incoming Employees whether before or after the date of the Incoming Relevant Transfer.
- 32.9 The Contractor indemnifies the Purchaser and any Replacement Contractor against any and all Employee Liabilities which the Purchaser or any Replacement Contractor may suffer as a result of or in connection with:
- 32.9.1 any failure by the Contractor or any Affiliate of the Contractor or any Sub-Contractor to comply with its obligations under Clause 17 and/or Clause 21 in relation to the provision of information, including but not limited to, such information being inaccurate and/or incomplete and/or not providing in a timely manner;
- 32.9.2 any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Outgoing Relevant Transfer arising directly or indirectly from any act, fault or omission of the Contractor or any Affiliate of the Contractor or any Sub-Contractor in respect of any Outgoing Employee on or before the date of the Outgoing Relevant Transfer;
- 32.9.3 any failure by the Contractor or any Affiliate of the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any Replacement Contractor to comply with its obligations under regulation 13 of TUPE;
- 32.9.4 any failure by the Contractor or any Affiliate of the Contractor or any Sub-Contractor to comply with its obligations under regulation 11 of TUPE or any award of compensation under regulation 12 of TUPE save where such failure arises from the failure of the Purchaser or any Replacement Contractor to comply with its obligations under regulation 11 of TUPE;

- 32.9.5 any claim arising out of the provision of, or proposal by the Contractor or any Affiliate of the Contractor or any Sub-Contractor to offer any change to any benefit, term or condition or working condition of any Outgoing Employee arising on or before the date of the Outgoing Relevant Transfer;
 - 32.9.6 any statement communicated to or action done by the Contractor or any Affiliate of the Contractor or any Sub-Contractor or in respect of any Outgoing Employee on or before the date of the Outgoing Relevant Transfer regarding the Outgoing Relevant Transfer which has not been agreed in advance with the Purchaser in writing;
 - 32.9.7 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Contractor or any Affiliate of the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person;
 - 32.9.8 any act or omission of the Contractor or any Affiliate of the Contractor or any Sub-Contractor whether occurring before, on or after the date of the Outgoing Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Outgoing Relevant Transfer;
 - 32.9.9 the breach or non-observance by the Contractor or any Affiliate of the Contractor or any Sub-Contractor occurring on or before the date of the Outgoing Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that the Purchaser or a Replacement Contractor is contractually obliged to honour; and
 - 32.9.10 any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Contractor or any Affiliate of the Contractor or any Sub-Contractor other than an Outgoing Employee for whom it is alleged the Purchaser or a Replacement Contractor may be liable by virtue of the Agreement or TUPE.
- 32.10 The Contractor indemnifies the Purchaser and any Replacement Contractor against any and all Employee Liabilities which the Purchaser or Replacement Contractor may incur arising from any act or omission of the Contractor or any Affiliate of the Contractor or any Sub-Contractor or any other event or occurrence in relation to any member of Staff, who is not an Outgoing Employee, during any period whether before, on or after the date of the Outgoing Relevant Transfer.
- 32.11 The Contractor indemnifies the Purchaser and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or Replacement Contractor may incur in respect of the emoluments and outgoings referred to in Clause 24.3.
- 32.12 In the event of termination pursuant to Clause 25.4.2, the Contractor shall be liable for and shall indemnify and keep the Purchaser indemnified in respect of any and all loss resulting from such termination.

32.13 The Contractor shall indemnify the Purchaser against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against, the Purchaser as a result of any breach by the Contractor of anti-slavery laws.

33. LIMITATION OF LIABILITY

33.1 References to liability in this Clause 33 apply to every liability arising under or in connection with the Agreement including liability in delict (including negligence), misrepresentation, restitution or otherwise.

33.2 Subject to Clauses 33.4 and 33.5, neither Party shall have liability to the other Party under the Agreement for any:

33.2.1 loss of profits, business, revenue or goodwill; or

33.2.2 indirect or consequential loss or damage.

33.3 Subject to Clauses 33.4 and 33.5, the liability of each Party to the other Party under or in relation to the Agreement is subject to the following cumulative financial limits, each to the extent permitted by law:

33.3.1 the aggregate liability of a Party in respect of loss or damage caused to any land, buildings or tangible property of the other Party shall not exceed Five Million Pounds (£5,000,000)]; and

33.3.2 the aggregate liability of a Party in respect of any claim made by the other Party under the Agreement flowing from any one event or a series of connected events (other than in respect of claims for loss or damage caused by the Party's negligence to any tangible property of the other Party) shall not exceed the greater of: (i) One Million Pounds (£1,000,000); and (ii) 150% of the total amount paid to the Contractor under the Agreement in the twelve (12) months preceding the claim giving rise to the liability.

33.4 Nothing in the Agreement shall limit or exclude the Contractor's liability arising:

33.4.1 under Clause 32

33.5 Nothing in the Agreement shall limit or exclude any either Party's liability for:

33.5.1 death or personal injury caused by its negligence;

33.5.2 misrepresentation;

33.5.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or

33.5.4 any other sort of liability which, by law, cannot be limited or excluded.

34. INSURANCE

- 34.1 The Contractor shall effect and maintain with reputable insurers employer's liability insurance and public liability insurance to the extent and subject to the limits on indemnity specified in the Invitation to Tender. Such insurance shall be unlimited as to numbers of claims.
- 34.2 The Contractor shall effect and maintain with reputable insurers adequate insurances covering all the Contractor's other liabilities in terms of the Agreement.
- 34.3 On the request of the Purchaser, the Contractor shall exhibit satisfactory evidence of the insurance policies referred to in this Clause 34, together with satisfactory evidence of payment of the premium.
- 34.4 Such insurance must be maintained for the Period and for a minimum of 5 years following the expiry or termination of the Agreement.

35. DISPUTE RESOLUTION

- 35.1 The Parties must attempt in good faith to resolve any Dispute or difference between them arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, in accordance with this Clause 31.
- 35.2 There shall be two levels of escalation, and at each level each Party will make available for the purposes of resolving Disputes and differences an appropriate representative most closely matching the description given below.

<u>Level</u>	<u>Representative</u>
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First Level	person with day to day responsibility for this Agreement.
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Second Level	person with managerial responsibility for this Agreement.
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- 35.3 An individual representing a Party at one level may not be made available by a Party to represent it at a higher level.
- 35.4 If a Dispute or difference is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both Parties. Once signed by both Parties, the resolution shall be binding on the Parties.
- 35.5 Unless the resolution of a Dispute or difference is reduced to writing signed by both Parties, all discussions and negotiations connected with the Dispute or difference shall be conducted without prejudice to the rights of the Parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.
- 35.6 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute or difference arises.
- 35.7 If a Dispute or difference has not been resolved, reduced to writing and signed by both Parties within seven days of the first meeting at the first level, the Dispute or difference shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.

- 35.8 Any Dispute or difference arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the foregoing sub-clauses of this Clause 35, may be referred by either Party to a court of competent jurisdiction for a final, binding and enforceable resolution.
- 35.9 Nothing contained in this Clause 35 shall prevent either Party from applying to a court of competent jurisdiction for interim relief to prevent the occurrence of irreparable harm.

36. DEFAULT

- 36.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 14 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.
- 36.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 36.1.
- 36.3 At any time while the Contractor is in Default the Purchaser may without prejudice to any of its other rights and remedies seek to remedy the effects of the Default by carrying out the activities necessary to perform the Services, obtain goods similar to the Goods or otherwise meet the objectives of the Agreement, or contract with a third party to do any of the same, and:
- 36.3.1 the Contractor will use all reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default; and
 - 36.3.2 the Contractor will indemnify the Purchaser in respect of the reasonable costs and expenses incurred by the Purchaser in remedying or seeking to remedy the effects of the Default.
- 36.4 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:
- 36.4.1 the extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Agreement; and
 - 36.4.2 the amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.
- 36.5 If any sum of money shall be due from the Contractor to the Purchaser, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Agreement or any other contract with the Purchaser.

37. TERMINATION

- 37.1 The Purchaser may terminate the Agreement at any time by giving 30 days' written notice to the Contractor. In the event of any such termination, the Contractor shall be entitled to payment in respect of all Goods and Services supplied up to the effective date of termination.
- 37.2 The Purchaser may terminate the Agreement by serving written notice on the Contractor with effect from the date specified in such Notice where the Contractor commits a material Default or repeated Defaults and (i) such Default(s) is/are incapable of remedy; or (ii) the Contractor has not remedied the material Default or repeated Defaults to the satisfaction of the Purchaser within 20 Working Days after issue of a written notice specifying the material Default and requesting it to be remedied.
- 37.2.1 The Purchaser may terminate the Agreement immediately on written notice to the Contractor in the event of a breach of any warranties set in Clause 8.
- 37.2.2 The Purchaser may terminate the Agreement immediately in the event of a Bidding Misrepresentation.
- 37.2.3 The Purchaser may terminate the Agreement immediately on providing written notice in the event of a Change of Control in respect of the Contractor.
- 37.2.4 The Purchaser may terminate the Agreement with immediate effect by notice where in respect of the Contractor:
- 37.2.5 a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
- 37.2.6 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 37.2.7 a petition is presented for its winding up (which is not dismissed within 14 days or its services) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
- 37.2.8 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 37.2.9 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 37.2.10 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

- 37.2.11 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986;
- 37.2.12 a debt relief order is entered into; or
- 37.2.13 any event similar to those listed above occurs under the law of any other jurisdiction.

38. CONSEQUENCES OF TERMINATION

- 38.1 The termination or expiry of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 38.2 Termination of the Agreement will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Agreement which, having regard to their terms, are intended to apply on or to survive termination or expiry.
- 38.3 If on the termination or expiry of the Agreement any Intellectual Property Rights in connection with the Agreement owned by a Contractor Party are required by the Purchaser for the efficient conduct of its business or the orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Agreement to the Purchaser or a third party, the Purchaser may acquire from the Contractor at the then fair market rate a non-exclusive licence to use any such Intellectual Property Rights which licence shall:
 - 38.3.1 be subject to a single, one-off payment;
 - 38.3.2 be perpetual and irrevocable;
 - 38.3.3 afford the Purchaser the right to make such modifications, adaptations and enhancements as it sees fit to products in relation to which the Intellectual Property Rights arise;
 - 38.3.4 permit the Purchaser to engage a third party to use, modify, adapt or enhance any such products, provided that such third party shall have entered into a confidentiality agreement with the Purchaser in a form to the reasonable satisfaction of the Contractor; and
 - 38.3.5 carry the right to grant sub-licences,and the Contractor will procure that such a licence is granted by any Contractor Party.
- 38.4 If fair market value cannot be agreed pursuant to Clause 31 the matter will be referred to the Dispute Resolution Procedure.
- 38.5 On the termination of the Agreement pursuant to Clause 37.1, Clause 37.2, Clause 4 (rejection of Goods), Clause 9 (conflict of interest) or Clause 21 (corruption), the Contractor will indemnify the Purchaser in respect of:-

- 38.5.1 any additional operational and administrative costs and expenses suffered or incurred by the Purchaser as a result of such termination;
 - 38.5.2 the costs and expenses suffered or incurred by the Purchaser in providing (or procuring that another party provides) goods or services similar to the Goods or Services on a temporary basis until the completion of a tendering or reappointment process carried out by the Purchaser to find a successor to the Contractor, but only to the extent that such costs and expenses exceed the Charges that would have been payable (or a reasonable estimate of such charges, to the extent uncertain) had the Agreement not been terminated; and
 - 38.5.3 the costs and expenses suffered or incurred by the Purchaser in carrying out the tendering or reappointment process referred to in Clause 38.5.2.
- 38.6 The costs and expenses of the Purchaser referred to in Clause 38.5.2 shall include reasonable charges to reflect the application of the Purchaser's internal resources, evidenced by records of time spent and other resources applied.
- 38.7 Upon the expiry or termination of the Agreement, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Agreement to the Purchaser or a third party.
- 38.8 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of Clause 38.7.
- 38.9 The cooperation referred to in Clause 38.7 may include, if the Purchaser requires:
- 38.9.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or
 - 38.9.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under the Agreement.

39. EXIT ASSISTANCE

- 39.1 The Parties shall use all reasonable endeavours to agree a draft exit plan for the activities necessary to facilitate the orderly transfer of the Services to the Purchaser or a New Contractor. Unless and until the Parties agree a final version, the remaining provisions of this Clause 39 will serve as the exit plan. On the serving of any notice of termination of the Agreement or, if earlier, on its termination, the Contractor shall comply with the exit plan for the period of up to 12 months as nominated by the Purchaser.
- 39.2 The objectives of the exit services to be provided by the Contractor are:
- 39.2.1 to maintain continuity of supply and minimise any disruption to the Purchaser's operations; and

to enable a smooth transfer of responsibility for the ongoing provision of the Services from the Contractor to the Purchaser or to a Replacement Contractor.

- 39.3 The Contractor must perform all exit services in a manner that is consistent with and calculated to achieve these objectives.
- 39.4 The Contractor must provide the Purchaser and the Replacement Contractor with all information reasonably required to assume responsibility for the ongoing provision of the Services, including:
 - 39.4.1 details of all tools, equipment, software and other materials used by the Contractor to provide the Services;
 - 39.4.2 up-to-date and complete records of all Services provided by the Contractor;
 - 39.4.3 full details of all outstanding, incomplete or ongoing Services; and
 - 39.4.4 a copy of all Purchaser Data in the Contractor's possession or control.
- 39.5 All information to be provided by the Contractor as part of the exit services will be supplied in a format and at a time specified by the Purchaser. If the Purchaser does not specify a format, the information must be supplied in a common non-proprietary format.
- 39.6 The Contractor will make available appropriate personnel to:
 - 39.6.1 attend handover meetings with the Purchaser and/or the New Contractor (as applicable);
 - 39.6.2 answer all reasonable questions from the Purchaser and/or the New Contractor about the provision of the Services; and
 - 39.6.3 explain any documentation and other materials provided by the Contractor in connection with the exit process.
- 39.7 Notwithstanding the foregoing, the Contractor shall not be required, as part of any exit plan, to provide any of its confidential information or make available any of its Intellectual Property Rights to any Replacement Contractor which is a direct competitor of the Contractor.
- 39.8 The Contractor will provide all reasonable assistance requested by the Purchaser for the purposes of migrating the Purchaser Data from the Contractor's systems onto the systems of the Purchaser or the New Contractor (as applicable). Any migration may be carried out in stages in accordance with a project plan and timetable specified by the Purchaser.

40. ASSIGNATION AND SUB-CONTRACTING

- 40.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Agreement or any part thereof without the prior written consent of the Purchaser.

- 40.2 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-Contractors. Sub-Contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Agreement.
- 40.3 The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Agreement in the same way as the Contractor is bound to comply.
- 40.4 The Purchaser shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Agreement or any part thereof:
- 40.4.1 to any person (including but not limited to any body in the private sector) which substantially performs any of the functions that previously had been performed by the Purchaser; or
- 40.4.2 with the previous consent in writing of the Contractor (which will not be unreasonably withheld or delayed).

41. RELATIONSHIP

- 41.1 The Contractor is an independent contractor during the Period and nothing in the Agreement establishes a relationship of employment, agency or partnership, or a joint venture between the Parties. Neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party other than as expressly permitted by the terms of the Agreement.

42. WAIVER AND CUMULATIVE REMEDIES

- 42.1 The failure of either Party to insist upon the performance or the strict performance of any provision of the Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 42.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be a waiver and notified in writing to the other Party.
- 42.3 The rights and remedies provided by the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

43. SEVERABILITY

- 43.1 If any provision of the Agreement is held invalid, illegal or unenforceable (an "Unenforceable Provision") for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
- 43.2 If an Unenforceable Provision is so fundamental that its severance prevents the accomplishment of the purpose of the Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity, but if the Parties have not implemented that remedy within 2 weeks of the declaration of the provision as

an Unenforceable Provision, either Party may terminate the Agreement forthwith by notice in writing to the other.

44. AMENDMENTS

- 44.1 The Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the Contractor and the Purchaser, each having completed the change control procedure set out in this Clause 26.
- 44.2 Should either Party wish to propose a Variation, it shall submit to the other 2 copies of a change control notice (CCN) completed in so far as that Party is able.
- 44.3 Each CCN shall contain: (i) the title of the Variation; (ii) the originator of the proposal for the Variation and the date of the proposal; (iii) the reason for the Variation; (iv) full details of the Variation including any specifications; (v) the price, if any, of the Variation; (vi) a timetable for implementation of the Variation; and (vii) details of the likely impact, if any, of the Variation on other aspects of the Agreement.
- 44.4 The CCN will be reviewed by the other Party and both Parties will seek to complete and agree the content of the CCN.
- 44.5 In the case of a Variation proposed by the Purchaser, the Parties will act reasonably in agreeing the content of the CCN and will execute a variation or amendment to the Agreement to implement the agreed CCN, without delay.
- 44.6 In the case of a Variation proposed by the Contractor, the Purchaser will act reasonably in considering the content of the CCN but the agreement or otherwise to the content of a CCN shall be at Purchaser's sole discretion.

45. NOTICES

- 45.1 Notices shall be:
 - 45.1.1 served in writing;
 - 45.1.2 served in English;
 - 45.1.3 sent to the Party receiving it by letter by prepaid recorded or special delivery post to the address of the relevant Party as detailed in this Agreement (or, where that Party is a company, that Party's registered address); and
 - 45.1.4 if sent in accordance with this Clause 45, deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

46. PUBLICITY

- 46.1 The Contractor shall not make any public statement identifying the Purchaser as a client or customer of the Contractor or using the Purchaser's name and/or brand in any promotion or marketing without the prior written consent of the Purchaser.

47. COMPLIANCE WITH THE LAW

- 47.1 The Contractor shall, in complying with all obligations incumbent upon it in terms of the Agreement, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.
- 47.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 47.1 above by all of their servants, employees, agents, consultants and sub-contractors.

48. THIRD PARTY RIGHTS

- 48.1 Unless it expressly states otherwise, the Agreement does not confer any rights to any third party under the Contract (Third Party Rights) (Scotland) Act 2017 which would enable a third party to enforce any of the terms of the Agreement.
- 48.2 Notwithstanding clause 48.1, a Replacement Contractor shall be able to enforce the following clauses of the Agreement against the Contractor: clause 21.3, clause 24.5, clause 32.7, clause 32.9, clause 32.10, and clause 32.11.

49. PARENT COMPANY GUARANTEE

- 49.1 At the request of the Purchaser, the Contractor shall promptly deliver to the Purchaser:
- 49.1.1 a validly executed parent company guarantee in favour of the Purchaser and/or Purchaser in the form set out in Schedule 4; and
 - 49.1.2 a certified copy extract of the board minutes of the parent company approving the execution of the guarantee

50. GOVERNING LAW AND JURISDICTION

- 50.1 The Agreement is governed by and shall be construed and interpreted in accordance with Scots law and, subject to Clause 35 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.
- 50.2 Notwithstanding Clause 50.1, where (i) the Purchaser is located in England or Northern Ireland; (ii) the Invitation to Tender specified that the Purchaser was willing to contract under the laws of England and Wales or Northern Ireland; and (iii) this has been agreed between the Parties, the Agreement shall be construed and interpreted in accordance with the laws of England and Wales or Northern Ireland (as the case may be) and, subject to Clause 35, the Parties submit to the exclusive jurisdiction of the courts of England and Wales or Northern Ireland (as the case may be). In such case, all references to Scottish legal terms or Scottish legal proceedings contained in the Agreement shall be deemed as having been replaced with the nearest English or Northern Irish equivalent.

SCHEDULE 1
DEFINITIONS

Acceptance Tests	means (i) the procedures for acceptance testing the Goods as set out in the Agreement; (ii) where no specific procedures for acceptance testing are set out in the Agreement, those procedures published by the manufacturer of the relevant Goods; or (iii) where no specific procedures for acceptance testing are set out in the Agreement or published by the manufacturer of the relevant Goods, the procedures established by Good Industry Practice as required for the Purchaser to satisfy itself that the Goods have been delivered and/or installed such that they are in accordance with the requirements of the Agreement, and includes Acceptance Tests carried out at any Re-Test.
Affiliate	means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect control with, that corporate body from time to time.
Agreement	means this legally binding agreement for the provision of Goods and/or Services made between the Purchaser and the Contractor comprising the preceding terms and conditions, the appendices and Schedules appended thereto, the order Form and any specific quantities or other requirements stipulated by the Purchaser related to such Goods and Services.
Assigned Employee	shall have the meaning set out in Clause 21 of the Agreement.
Bidding Misrepresentation	means any discovery by the Purchaser that the non-collusive tendering certificate submitted by the Contractor (if any) to Purchaser or any other communication, document or other information in whatever form provided by the Contractor to Purchaser or the Purchaser is erroneous, false, misleading or untrue in any material respect.
Charges	means the charges as laid out in the relevant Order Form and/or Pricing Matrix.
Change of Control	means a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010.
Commencement Date	means the commencement date stated in the Agreement.
Confidential Information	shall mean all information of a confidential nature obtained by the Contractor under or in connection with the Agreement.

Contractor Party	means the Contractor or any Sub-Contractor.
Contractor Software	means Software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.
Contract Worker	means an officer, servant, employee or agent of a Contractor Party, and any person on or at the premises of the Purchaser in connection with the Agreement at the express or implied invitation of the Contractor or any other Contract Worker.
Control	has the meaning given in section 450 of the Corporation Tax Act 2010.
Data Controller	has the meaning given to it in the Data Protection Laws.
Data Processor	has the meaning given to it in the Data Protection Laws.
Data Protection Laws	means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directive or requirement of any regulatory body which relates to the protection of individuals with regard to privacy or the Processing of Personal Data to which a Party is subject as may be amended, updated or replaced from time to time (including, where applicable) the Data Protection Act 2018, the GDPR, the UK GDPR, and the guidance and codes of practice issued by the Information Commissioner).
Data Subject(s)	shall have the meaning ascribed to it under Data Protection Laws.
Data Subject Access Request(s)	shall have the meaning given to it under Data Protection Laws.
Default	means non-compliance with or default against any obligation under the Agreement by the Contractor.
Defective Goods	means Goods not properly manufactured or delivered in accordance with the Agreement, or Goods in a consignment which is deficient in weight, quantity or measure.
Defective Services	means Services not properly performed in accordance with the Agreement and/or applicable Service Levels.
Deliverable	means any output of the Services and any other document, product or material provided to the Purchaser by or on behalf of the Contractor in relation to the Services.
Discrimination Legislation	means the Equality Act 2010 and all applicable Law in relation to discrimination.

Direct Award	means (if applicable) the direct award procedure used by the Purchaser to place the Agreement with the Contractor and detailed in the Invitation to Tender.
Dispute	means any dispute or difference of opinion between the Purchaser and the Contractor in connection with the Agreement.
Employee Liabilities	<p>means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including but not limited to:</p> <ul style="list-style-type: none"> (a) claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and (b) compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.
Employee Liability Information	has the meaning given in regulation 11 of TUPE.
Force Majeure	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including Public Health Events, industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.
GDPR	means the General Data Protection Regulation (EU 2016/679) (GDPR).
Good Industry Practice	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

Goods	means the goods to be supplied by the Contractor as detailed in the Specification.
Incoming Employees	means individuals whose employment/engagement transfers to the Contractor by operation of TUPE on the commencement of the provision of the Services.
Incoming Relevant Transfer	means a transfer within the meaning given in regulation 2(1) of TUPE which has the effect of transferring the employment of Incoming Employees to the Contractor on the commencement of the provision of the Services.
Information Commissioner	means the Commissioner as set out in Part 5 of the Data Protection Act 2018.
Information Legislation	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
Intellectual Property Rights	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), plant variety rights, applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
Invitation to Tender	means, if applicable, the invitation issued by the Purchaser with, or pursuant to, the Notice.
Issued Property	means anything issued or otherwise made available to the Contractor for any purpose by or on behalf of the Purchaser including working papers and other written materials.
Law	means all applicable laws, consents and approvals, including legislative provisions, sub-ordinate legislation, legally binding codes of practice and the common law.
Malicious Software	means any software programme or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Milestone	means the completion of any event or task of a material nature by a particular date, such as the delivery of a Deliverable or completion of certain Services, identified as a milestone in the applicable Specification and/ or Order Form.

Mini-Competition	means (if applicable) the mini-competition procedure used by the Institution to place the Agreement with the Contractor and detailed in Section 2 of the Invitation to Tender.
Notice	means a letter or other document sent by one Party to the other which has a specific effect with reference to the Agreement. Examples include notices which are given when there are changes to the Agreement, or breaches of the Agreement.
Open Source Software	means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other Intellectual Property Rights in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.
Order	means an order placed for Goods and/or Services under the Agreement.
Order Form	means a document or online ordering system that sets out the details of an Order in the form set out in Schedule 5 or such similar or analogous form agreed between the Parties.
Outgoing Employees	means individuals whose employment/engagement transfers by operation of TUPE from the Contractor on the ceasing of the provision of the Services by the Contractor.
Outgoing Relevant Transfer	means a transfer within the meaning given in regulation 2(1) of TUPE which has the effect of transferring the employment of the Outgoing Employees to the Purchaser or any Replacement Contractor on expiry of the Agreement or on the earlier cessation of the Services or part thereof.
Parent Company	means if the Contractor is a "company", any "company" which is a "holding company" of the Contractor, as such terms are defined in section 1159 of the Companies Act 2006.
Period	means the duration of the Agreement, as set out in the Order Form.
Personal Data	has the meaning given in the Data Protection Laws.
Premises	means any premises of the Purchaser being a location where Goods are to be delivered or Services are to be provided.
Pricing Matrix	means the pricing matrix set out in Schedule 2.
Processing	has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

Professional Services	means consultancy services and any services relating to the provision of legal, financial or other specialist advice which are subject to Laws or regulatory requirements affecting the nature of such services, the conduct of business by suppliers of such services and/ or the terms upon which such services can be supplied.
Public Health Event	means a Force Majeure resulting from a public health event that has been declared a pandemic by the World Health Organisation.
Purchaser Requirements	means the operational requirements, functions and characteristics of the supply of Goods and/or Services set out in Schedule 3 (Specification).
Purchaser Data	means all information, text, drawings, diagrams, images or sounds that are embodied in any electronic or tangible medium, and which: (i) are supplied by the Purchaser to the Contractor under or in contemplation of the Agreement; (ii) are held by the Purchaser but are accessed by the Contractor under the Agreement; (iii) the Contractor is obliged to generate or process under the Agreement; or (iv) is otherwise stored in, generated, processed or created by any part of the Managed Service or the Services.
Purchaser Materials	means all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Purchaser to the Contractor in connection with the Services.
Records	means any files, documents or other records which relate to delivery of the Agreement or the management, administration, organisation or planning of them whether in writing or on magnetic or other media.
Rejection Notice	means a notice from the Purchaser to the Contractor rejecting Goods in accordance with Clause 6.1 or 6.2 of the Agreement.
Relevant Requirements	means all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
Relevant Transfer	has the meaning given in regulation 2(1) of TUPE.
Replacement Contractor	means any third party contractor appointed by the Purchaser or by any other Purchaser, company or body corporate, to supply the Services (or similar services) or part thereof in succession to the Contractor on expiry of the Agreement or the earlier cessation of the Services or part thereof.

Re-Test	means the carrying out of Acceptance Tests on the second and any subsequent occasion.
Schedule	means a schedule annexed to the preceding term and conditions.
Services	means the services as are to be supplied by the Contractor to Purchaser as set out in the Specification (including any Professional Services and including any part of the Services that is provided using Software hosted by or on behalf of the Supplier so specified).
Service Levels	means the standards and particular levels of service that the Contractor has undertaken to meet, as contained in the Agreement and the Specification.
Software	means Specifically Written Software, Contractor Software and Third Party Software.
Specifically Written Software	means any Software (including database Software, linking instructions, test scripts, compilation instructions and test instructions) created by the Contractor (or by a Sub-Contractor or other third party on behalf of the Contractor) specifically for the purposes of the Agreement.
Specification	means the specification of the Services that the Contractor has undertaken to provide set out in Schedule 3.
Staff	means all employees, workers, agents, consultants and individual contractors of the Contractor, Affiliates of the Contractor and/or of any Sub-Contractor.
Staffing Information	means such information as the Purchaser may request in an anonymised format or otherwise including: <ul style="list-style-type: none"> (a) ages; (b) dates of commencement of employment or engagement; (c) job or role descriptions and objectives of role; (d) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (e) the identity of the employer or relevant contracting party; (f) their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;

- (g) their wages, salaries and profit sharing arrangements as applicable;
- (h) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (i) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (j) details of any such individuals on long call sickness absence, parental leave, maternity leave or other authorised long term absence;
- (k) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (l) any other Employee Liability Information.

Sub-Contract

means any contract or proposed contract between the Contractor and any third party in respect of the performance of the Agreement (or any part thereof). The terms "Sub-Contractor" and "Sub-Contracting" shall be similarly construed.

Tender

means the tender submitted by the Contractor to the Purchaser in response to the ITT.

Third Party Software

means Software which is proprietary to any third party (other than an Affiliate of the Contractor) or any Open Source Software which in any case is, will be or is proposed to be used by the Service Provider for the purposes of providing the Services.

Transition Period

means any period between the award of the Agreement and the Commencement Date as set out in the Agreement.

Transition Plan

means the Contractor's plan for the Lead-in Period forming part of the Agreement.

TUPE

means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

Unenforceable Provision

has the meaning given to it in Clause 43.1 of the Agreement.

UK GDPR

means the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3

of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

Warranty Period

means the shorter of (i) 12 months after the delivery of the relevant Goods to the Purchaser; and (ii) 18 months from the date the Goods pass the Acceptance Tests.

Working Day

means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

Working Hour

means an hour during a Working Day between the hours of 9am and 5pm.