

SCHEDULE 2.1

SERVICES DESCRIPTION

Please refer to Services Description as detailed in Attachment 2.1.

SCHEDULE 2.2

PERFORMANCE LEVELS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.2 of Part II of Annex 1;
“End User”	any person authorised by the Buyer to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1(a) of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Buyer to manage and review the Supplier's performance under this Contract, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 5.1 of Part II of Annex 1;
“Service Availability”	has the meaning given in Paragraph 2 of Part II of Annex 1;
“Service Downtime”	any period of time during which any of the Services are not Available; and
“System Response Time”	has the meaning given in Paragraph 2.1 of Part II of Annex 1.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.1 Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators) of the Order Form sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Buyer a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a **“Repeat KPI Failure”**.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators) of the Order Form depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Service Points
Target Performance Level: 99%	0
Minor KPI Failure: 98.0% - 98.9%	1
Serious KPI Failure: 97.0% - 97.9%	2
Severe KPI Failure: 96.0% - 96.9%	3
KPI Service Threshold: below 96%	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

4 PERMITTED MAINTENANCE – NOT USED

The Supplier shall be allowed to book a maximum of [*insert number*] hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Buyer.

5 SERVICE CREDITS

- 5.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Buyer shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:

- (a) a report to the Buyer Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and
- (b) a report created by the Supplier to the Buyer’s senior responsible officer which summarises the Supplier’s performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the “**Balanced Scorecard Report**”).

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- (l) such other details as the Buyer may reasonably require from time to time; and

Information in respect of previous Service Periods

- (m) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- (n) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- (o) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- (p) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Buyer and the Supplier for the next Quarter.

Balanced Scorecard Report

1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
- (e) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
- (f) Milestone trend chart, showing performance of the overall programme;
- (g) sustainability and energy efficiency indicators, for example energy consumption and recycling performance; and
- (h) Social Value (as applicable).

1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.

- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Buyer shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Buyer Representative.
- 1.6 The Buyer shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

2 PERFORMANCE RECORDS

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Buyer upon the Buyer's request. The records and documents of the Supplier shall be available for inspection by the Buyer and/or its nominee at any time and the Buyer and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Buyer such supporting documentation as the Buyer may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Buyer are available to the Buyer on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

The Buyer reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Contract against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

**PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS
TABLES**

Found in Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators
Tables) of the Order Form

PART II: DEFINITIONS

1 AVAILABLE - NOT USED

1.1 The IT Environment and/or the Services shall be Available when:

- (a) End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- (b) the Supplier System is able to process the Buyer Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- (c) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2 SERVICE AVAILABILITY – NOT USED

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

- MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and
- SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (*Maintenance*) shall be subtracted from the total number of hours in the relevant Service Period; and
- (b) Service Points shall accrue if:
 - (i) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
 - (ii) where maintenance undertaken by the Supplier exceeds [*insert number*] hours in any Service Period.

3 RESPONSE TIMES – NOT USED

3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of

the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

- 3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

4 HELP DESK RESPONSE TIMES

- 4.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.
- 4.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Buyer in accordance with the provisions of Part B of this Schedule.

5 FIX TIMES

- 5.1 The **“Fix Time”** of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and **“Resolution”** means in relation to a Service Incident either:
- (a) the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
 - (b) the Buyer has been provided with a workaround in relation to the Service Incident deemed acceptable by the Buyer.
- 5.2 Fix Times for Severity 3 Service Incidents, Severity 4 Service Incidents and Severity 5 Service Incidents shall be measured in Operational Hours.
- Worked example:** if the Operational Hours for a fault are 0800-1800, then the clock stops measuring Fix Time at 1800 in the evening and restarts at 0800 the following day).
- 5.3 Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.
- 5.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Buyer on Fix Times as part of the Performance Monitoring Report.
- 5.5 For the purposes of this Paragraph 5, the following expressions shall have the meanings set opposite them below:

“Operational Hours”	In relation to any Service, the hours for which that Service is to be operational as set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
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“Service Incident”	a reported occurrence of a failure to deliver any part of the Services in accordance with the Buyer Requirements or the Performance Indicators;
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“Severity Incident”	1	Service	a Service Incident which, in the reasonable opinion of the Buyer: (a) constitutes a loss of the Service which prevents a large group of End Users from working; (b) has a critical impact on the activities of the Buyer; (c) causes significant financial loss and/or disruption to the Buyer; or (d) results in any material loss or corruption of Buyer Data; <i>Non-exhaustive examples:</i> • a loss of power to a data centre causing failure of Services; or • a failure of the Services to provide user authentication service;
“Severity Incident”	2	Service	a Service Incident which, in the reasonable opinion of the Buyer has the potential to: (a) have a major (but not critical) adverse impact on the activities of the Buyer and no workaround acceptable to the Buyer is available; (b) have a major (but not critical) adverse impact on the activities of the Buyer and no workaround acceptable to the Buyer is available; or (c) cause a financial loss and/or disruption to the Buyer which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure; <i>Non-exhaustive examples:</i> • corruption of organisational database tables; or • loss of ability to update Buyer Data.
“Severity Incident”	3	Service	a Service Incident which, in the reasonable opinion of the Buyer has the potential to: (a) have a major adverse impact on the activities of the Buyer which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Buyer; or (b) have a moderate adverse impact on the activities of the Buyer; <i>Non-exhaustive example:</i>

"Severity Incident"	4	Service	inability to access data for a class of customers;
			a Service Incident which, in the reasonable opinion of the Buyer has the potential to have a minor adverse impact on the provision of the Services to End Users

Non-exhaustive example:

inability to access data for a single customer; and

"Severity Incident"	5	Service	a Service Incident comprising a flaw which is cosmetic and, as such, does not undermine the End User's confidence in the information being displayed;
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Non-exhaustive examples:

- spelling error; or
- misalignment of data on screen display.

6 SATISFACTION SURVEYS

6.1 In order to assess the level of performance of the Supplier, the Buyer may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a **"Satisfaction Survey"**), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:

- the assessment of the Supplier's performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
- other suggestions for improvements to the Services.

6.2 The Buyer shall reflect in the Balanced Scorecard Report any aspects of the Supplier's performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

7 VIRTUAL LIBRARY COMPLETENESS

The Virtual Library shall be complete where all of the information required under Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form has been uploaded to the Virtual Library in accordance with Paragraph 3 of Schedule 8.4 (Reports and Records Provisions).

SCHEDULE 2.3

STANDARDS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Standards Hub”	the Government’s open and transparent standards adoption process as documented at http://standards.data.gov.uk/ ; and
“Suggested Challenge”	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2 GENERAL

- 2.1 Throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Buyer’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Buyer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Buyer’s receipt, of the Services is explained to the Buyer (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Buyer and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4 OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Contract, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government’s IT infrastructure and the suggested open standard.

- 4.3 The Supplier shall ensure that all documentation published on behalf of the Buyer pursuant to this Contract is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Buyer otherwise agrees in writing.

5 TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

6 ACCESSIBLE DIGITAL STANDARDS

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- (a) ITIL v4;
- (b) ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- (c) ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- (d) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
- (e) ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

8 ENVIRONMENTAL REQUIREMENTS

The Supplier shall comply with the environmental requirements set out in Attachment 2.3 (Environmental Requirements) of the Order Form.

9 HARDWARE SAFETY STANDARDS

9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
- (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
- (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
- (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

ANNEX: ENVIRONMENTAL REQUIREMENTS

DEFINITIONS

1. In this Annex, the following definitions shall apply:

- “Permitted Item”** means those items which are permissible under this Contract to the extent set out in Table B of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Prohibited Items”** means those items which are not permissible under this Contract as set out at Table A of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Sustainability Reports”** written reports to be completed by the Supplier containing the information outlined in Table C of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Waste Hierarchy”** means prioritisation of waste management in the following order of preference:
- (1) Prevention – by using less material in design and manufacture. Keeping products for longer;
 - (2) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
 - (3) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
 - (4) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and
 - (5) Disposal - Landfill and incineration without energy recovery.

ENVIRONMENTAL REQUIREMENTS

2. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to this Contract.
3. The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
4. In performing its obligations under this Contract the Supplier shall to the reasonable satisfaction of the Buyer:
 - 4.1. demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Buyer’s reasonable questions;
 - 4.2. prioritise waste management in accordance with the Waste Hierarchy;
 - 4.3. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;

- 4.4. ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
- 4.5. inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Contract is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Contract is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
- 4.6. minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
- 4.7. reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 5. The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
- 6. The Supplier shall not provide to the Buyer Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 7. The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
 - 7.1. it is a Permitted Item; or
 - 7.2. the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 8. The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Contract and provide the Sustainability Report to the Buyer on the date and frequency outlined in Table C of this Annex.
- 9. The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

TABLE A – Prohibited Items

As stated in Attachment 2.3 (Environmental Requirements) of the Order Form Attachments

TABLE B – Permitted Items

NOT USED

TABLE C – Sustainability Reports

As stated in Attachment 2.3 (Environmental Requirements) of the Order Form Attachments

SCHEDULE 2.4
SECURITY MANAGEMENT

PART A – SECURITY ASSURANCE

1. Definitions

In this Schedule:

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	(a) an event that results, or could result, in: (b) any unauthorised access to or use of the Buyer Data, the Services and/or the Information Management System; and/or (c) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Buyer Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract;
“Certification Requirements”	means the information security requirements set out in Paragraph 6;
“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Higher Risk Sub-contractor”	means a Sub-contractor that Processes Buyer Data, where that data includes either: (a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); or (b) Special Category Personal Data;
“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;

“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Buyer Data, the Buyer, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;
“Information Management System”	means (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Buyer Data; and (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
“Information Security Approval Statement”	means a notice issued by the Buyer which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that: (a) the Buyer is satisfied that the identified risks have been adequately and appropriately addressed; (b) the Buyer has accepted the residual risks; and (c) the Supplier may use the Information Management System to Process Buyer Data;
“IT Health Check”	has the meaning given in Paragraph 7.1;
“Medium Risk Sub-contractor”	means a Sub-contractor that Processes Buyer Data, where that data (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); and (b) does not include Special Category Personal Data;

“Personal Data Processing Statement”	means a document setting out: (a) the types of Personal Data which the Supplier and/or its Sub-contractors Processes or will Process under this Contract; (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Contract; (c) the nature and purpose of such Processing; (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Contract; and (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Contract against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;
“Process”	means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
“Required Changes Register”	mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;
“Risk Register”	is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Buyer for approval in accordance with Paragraph 4;
“Security Management Plan”	means the document prepared by the Supplier using the template in Annex 3, comprising: (a) the Information Assurance Assessment; (b) the Personal Data Processing Statement; (c) the Required Changes Register; and (d) the Incident Management Process;
Special Category Personal Data	means the categories of Personal Data set out in article 9(1) of the GDPR;

2. Introduction

2.1 This Schedule sets out:

2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Buyer Data and the Information Management System;

2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Buyer Data;

2.1.3 The security requirements in Annex 1, with which the Supplier must comply;

2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term;

2.1.5 the Supplier's obligations to:

(a) return or destroy Buyer Data on the expiry or earlier termination of this Contract; and

(b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and

(c) report Breaches of Security to the Buyer.

3. Principles of Security

3.1 The Supplier acknowledges that the Buyer places great emphasis on the confidentiality, integrity and availability of the Buyer Data and, consequently on the security of:

3.1.1 the Sites;

3.1.2 the IT Environment;

3.1.3 the Information Management System; and

3.1.4 the Services.

3.2 Notwithstanding the involvement of the Buyer in assessing the arrangements which the Supplier implements to ensure the security of the Buyer Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:

3.2.1 the security, confidentiality, integrity and availability of the Buyer Data whilst that Buyer Data is under the control of the Supplier or any of its Sub-contractors; and

3.2.2 the security of the Information Management System.

3.3 The Supplier shall:

- 3.3.1 comply with the security requirements in Annex 1; and
- 1.1.1 ensure that each Sub-contractor that Processes Buyer Data complies with the Sub-contractor Security Requirements.
- 3.4 The Supplier shall provide the Buyer with access to Supplier Personnel responsible for information assurance to facilitate the Buyer's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4. Information Security Approval Statement

- 4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Services Commencement Date.
- 4.2 The Supplier may not use the Information Management System to Process Buyer Data unless and until:
 - 4.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and
 - 4.2.2 the Buyer has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.
- 4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Buyer Data and the Information Management System.
- 4.4 The Supplier shall prepare and submit to the Buyer within 20 Working Days of the date of this Contract, the Security Management Plan, which comprises:
 - 4.4.1 an Information Assurance Assessment;
 - 4.4.2 the Required Changes Register;
 - 4.4.3 the Personal Data Processing Statement; and
 - 4.4.4 the Incident Management Process.
- 4.5 The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:
 - 4.5.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Buyer Data; or
 - 4.5.2 a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.
- 4.6 If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Buyer's reasons into account in the preparation of a revised Security Management Plan,

which the Supplier shall submit to the Buyer for review within 10 Working Days or such other timescale as agreed with the Buyer.

4.7 The Buyer may require, and the Supplier shall provide the Buyer and its authorised representatives with:

4.7.1 access to the Supplier Personnel;

4.7.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and

4.7.3 such other information and/or documentation that the Buyer or its authorised representatives may reasonably require,

to assist the Buyer to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Buyer Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Buyer in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Buyer with the access that it requires within 24 hours of receipt of such request.

5. Compliance Reviews

5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.

5.2 The Supplier shall notify the Buyer within 2 Working Days after becoming aware of:

5.2.1 a significant change to the components or architecture of the Information Management System;

5.2.2 a new risk to the components or architecture of the Information Management System;

5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;

5.2.4 a change in the threat profile;

5.2.5 a significant change to any risk component;

5.2.6 a significant change in the quantity of Personal Data held within the Service;

5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or

5.2.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

5.3 Within 10 Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Required Changes

Register and submit the updated Required Changes Register the Buyer for review and approval.

- 5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

6. Certification Requirements

- 6.1 The Supplier shall be certified as compliant with:

- 6.1.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

- 6.1.2 Cyber Essentials PLUS,

and shall provide the Buyer with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Buyer Data.

- 6.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:

- 6.2.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; or

- 6.2.2 Cyber Essentials PLUS,

and shall provide the Buyer with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Buyer Data.

- 6.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.

- 6.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Buyer Data:

- 6.4.1 securely destroys Buyer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

- 6.4.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Buyer.

- 6.5 The Supplier shall provide the Buyer with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Buyer Data.

- 6.6 The Supplier shall notify the Buyer as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the

Certification Requirements and, on request from the Buyer, shall or shall procure that the relevant Sub-contractor shall:

- 6.6.1 immediately ceases using the Buyer Data; and
- 6.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Buyer Data in accordance with the requirements set out in this Paragraph.
- 6.6.3 The Buyer may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7. Security Testing

- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
 - 7.1.1 testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**"); and
 - 7.1.2 such other security tests as may be required by the Buyer,
- 7.2 The Supplier shall complete all of the above security tests before the Supplier submits the Security Management Plan to the Buyer for review in accordance with Paragraph 4; and it shall repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to the Buyer for review in accordance with this Paragraph.
- 7.3 In relation to each IT Health Check, the Supplier shall:
 - 7.3.1 agree with the Buyer the aim and scope of the IT Health Check;
 - 7.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Buyer with a copy of the full report;
 - 7.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
 - (a) prepare a remedial plan for approval by the Buyer (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (i) how the vulnerability will be remedied;
 - (ii) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
 - (A) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "medium";
 - (B) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "high"; and

- (C) within 10 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
 - (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Buyer, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (b) comply with the Vulnerability Correction Plan; and
 - (c) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Buyer.
- 7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within [2] Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Buyer with a copy of the test report and:
 - 7.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and
 - 7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Buyer.
- 7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Buyer from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.
- 7.7 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

8. Security Monitoring and Reporting

- 8.1 The Supplier shall:
 - 8.1.1 monitor the delivery of assurance activities;
 - 8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;
 - 8.1.3 agree a document which presents the residual security risks to inform the Buyer’s decision to give approval to the Supplier to Process, store and transit the Buyer Data;

- 8.1.4 monitor security risk impacting upon the operation of the Service;
- 8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
- 8.1.6 agree with the Buyer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Buyer within 20 Working Days of Effective Date.

9. Malicious Software

- 9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Buyer Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:
 - 9.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Buyer Data (whilst the Buyer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
 - 9.3.2 by the Buyer, in any other circumstance.

10. Breach of Security

- 10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.
- 10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:
 - 10.2.1 Immediately take all reasonable steps necessary to:
 - (a) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (b) remedy such Breach of Security to the extent possible;
 - (c) apply a tested mitigation against any such Breach of Security; and

- (d) prevent a further Breach of Security in the future which exploits the same root cause failure;
- 10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Buyer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.
- 10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Buyer.

Annex 1: Security Requirements

1. Security Classification of Information

If the provision of the Services requires the Supplier to Process Buyer Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Buyer from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

2.1 The Supplier shall ensure that any Buyer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.

2.2 The Supplier shall ensure that any device which is used to Process Buyer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>.

3. Networking

The Supplier shall ensure that any Buyer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

4. Personnel Security

4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.

4.2 The Buyer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Buyer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Buyer Data or data which, if it were Buyer Data, would be classified as OFFICIAL-SENSITIVE.

4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Buyer Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Buyer Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Buyer Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Buyer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Buyer Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Buyer Data (“phishing”).

5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Buyer on request.

6. Data Destruction or Deletion

The Supplier shall:

- 6.1 prior to securely sanitising any Buyer Data or when requested the Supplier shall provide the Government with all Buyer Data in an agreed open format;
- 6.2 have documented processes to ensure the availability of Buyer Data in the event of the Supplier ceasing to trade;
- 6.3 securely erase in a manner agreed with the Buyer any or all Buyer Data held by the Supplier when requested to do so by the Buyer;

6.4 securely destroy in a manner agreed with the Buyer all media that has held Buyer Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Buyer; and

6.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. Audit and Protective Monitoring

7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Buyer Data.

7.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the Information Management System.

7.3 The retention periods for audit records and event logs must be agreed with the Buyer and documented in the Security Management Plan.

8. Location of Buyer Data

The Supplier shall not and shall procure that none of its Sub-contractors Process Buyer Data outside the United Kingdom without the prior written consent of the Buyer, which may be subject to conditions.

9. Vulnerabilities and Corrective Action

9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Buyer Data.

9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:

9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and

9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:

- 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
- 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
- 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:
 - 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 9.4.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Buyer in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. Secure Architecture

- 10.1 The Supplier shall design the Information Management System in accordance with:
 - 10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
 - 10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
 - 10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;

- (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Buyer Data and/or the Buyer System that those personnel be subject to appropriate security screening and regular security training;
- (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Buyer to securely manage the Buyer's use of the Service;
- (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Buyer with the audit records it needs to monitor access to the Service and the Buyer Data held by the Supplier and/or its Sub-contractors; and

- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

Annex 2: Security Requirements for Sub-contractors

1. Application of Annex

- 1.1 This Annex applies to all Sub-contractors that Process Buyer Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Buyer; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Buyer Data.

2. Designing and managing secure solutions

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to the Buyer on the Buyer's request.

3. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Buyer Data outside the United Kingdom. The Buyer may permit the Sub-contractor to Process Buyer Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must securely erase any or all Buyer Data held by the Sub-contractor when requested to do so by the Buyer; and securely destroy all media that has held Buyer Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Buyer.

4. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at

<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

4.2 The Sub-contractor must, if the Buyer requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Buyer Data containing Personal Data above certain volumes specified by the Buyer, or containing Special Category Personal Data.

4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. End User Devices

5.1 The Sub-contractor shall ensure that any Buyer Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.

5.2 The Supplier shall ensure that any device used to Process Buyer Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

6. Networking

The Supplier shall ensure that any Buyer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

7. Patching and Vulnerability Scanning

7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8. Third Party Sub-contractors

8.1 The Sub-contractor must not transmit or disseminate the Buyer Data to any other person unless specifically authorised by the Buyer. Such authorisation must be in writing to be effective and may be subject to conditions.

8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Buyer Data where the licence terms of that software purport to grant the licensor rights to Progress the Buyer Data greater than those rights strictly necessary for the use of the software.

Annex 3:

Security Management Plan Template

Security Management Plan Template (Accreditation)

[Project/Service and Supplier Name]

1 Executive Summary

<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>

2 System

Description

2.1 Background

< A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>

2.2 Organisational Ownership/Structure

< Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>

2.3 Information assets and flows

<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>

2.4 System Architecture

<A description of the physical system architecture, to include the system management. A diagram will be needed here>

2.5 Users

<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>

2.6 Locations

<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>

2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Key roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor >

3 Risk Assessment

3.1 Accreditation/Assurance Scope

<This section describes the scope of the Accreditation/Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SIRO/SRO and included here.>

3.3 Business impact assessment

< A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below

should be used as the format to identify the risks and document the controls used to mitigate those risks. >

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	Very low
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users home addresses when bank details are altered. C15. Staff awareness training	Low

3.5 Controls

<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

3.6 Residual risks and actions

<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>

4 In-service controls

< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:

- a) information risk management and timescales and triggers for a review;*
- b) contractual patching requirements and timescales for the different priorities of patch;*
- c) protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;*
- d) configuration and change management;*
- e) incident management;*
- f) vulnerability management;*
- g) user access management; and*
- h) data sanitisation and disposal.>*

5 Security Operating Procedures (SyOps)

< If needed any SyOps requirements should be included and referenced here.>

6 Major Hardware and Software and end of support dates

< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7 Incident Management Process

<The suppliers' process, as agreed with the Buyer/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Buyer/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>

8 Security Requirements for User Organisations

<Any security requirements for connecting organisations or departments should be included or referenced here.>

9 Required Changes Register

<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Buyer name	11/11/2018	Jul-2019	Open

10 Personal Data Processing Statement

<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Buyer; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Buyer Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Buyer Data against a Security Breach including a Personal Data Breach.>

11 Annex A. ISO27001 and/or Cyber Essential Plus certificates

<Any certifications relied upon should have their certificates included>

12 Annex B. Cloud Security Principles assessment

<A spreadsheet may be attached>

13 Annex C. Protecting Bulk Data assessment if required by the Buyer/Customer

<A spreadsheet may be attached>

14 Annex E. Latest ITHC report and Vulnerability Correction Plan

PART B – SECURITY ACCREDITATION – NOT USED

SCHEDULE 2.5

NOT USED

SCHEDULE 3

BUYER RESPONSIBILITIES

1 INTRODUCTION

- 1.1 The responsibilities of the Buyer set out in Attachment 3 (Buyer Responsibilities) of the Order Form shall constitute the Buyer Responsibilities under this Contract. Any obligations of the Buyer in Attachment 2.1 (*Services Description*) of the Order Form and Attachment 4.1 (*Supplier Solution*) of the Order Form shall not be Buyer Responsibilities and the Buyer shall have no obligation to perform any such obligations unless they are specifically stated to be “Buyer Responsibilities” and cross referenced in the table in Attachment 3 (Buyer Responsibilities) of the Order Form.
- 1.2 The responsibilities specified within this Schedule and Attachment 3 (Buyer Responsibilities) of the Order Form shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

The Buyer shall:

- (a) perform those obligations of the Buyer which are set out in Attachment 3 (Buyer Responsibilities) of the Order Form;
- (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Buyer’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- (c) provide sufficient and suitably qualified staff to fulfil the Buyer’s roles and duties under this Contract as defined in the Implementation Plan;
- (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Buyer and is authorised for release by the Buyer; and
- (e) procure for the Supplier such agreed access and use of the Buyer Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Buyer's normal working hours on each Working Day or as otherwise agreed by the Buyer (such agreement not to be unreasonably withheld or delayed).

SCHEDULE 4.1

SUPPLIER SOLUTION

The details of the Supplier Solution are documented in Attachment 4.1 (Supplier Solution) of the Order Form.

SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

The Commercially Sensitive Information is captured in Attachment 4.2 (Commercially Sensitive Information) of the Order Form.

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

The Notified Key-Subcontractors are captured in Attachment 4.3 (Notified Key-Subcontractors) of the Order Form]

SCHEDULE 4.4

THIRD PARTY CONTRACTS

Third Party Contracts s are captured in Attachment 4.4 (Third Party Contracts) of the Order Form.

SCHEDULE 5

SOFTWARE

THE SOFTWARE

Where applicable, details of licensed software relating to the Contract are captured in Attachment 5 (Software) of the Order Form.

ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

[Supplier letterhead]

**[insert Buyer
name and address]**

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

We refer to the agreement between us dated *[insert date]* in respect of *[brief summary of subject of the Contract]* (the “Contract”). Capitalised expressions used in this letter have the same meanings as in the Contract.

In accordance with Clause 17.4(b) of the Contract we confirm that:

1. the Buyer is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Buyer may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.4(b) of the Contract.

Yours faithfully,

Signed:

On behalf of *[name of the Supplier]*

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the “**Sub-licensee**”); and
- (2) [*insert name*] of [*insert address*] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [*insert name of Buyer*] (the “**Buyer**”) and the Supplier are party to a contract dated [*insert date*] (the “**Contract**”) for the provision by the Supplier of [*insert brief description of services*] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Contract to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Contract, unless the context otherwise requires:

“Confidential Information”

means:

(a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test

scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Buyer pursuant to this Contract to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;

(b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or

(c) was independently developed without access to the Information;

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

"Sub-licence" has the meaning given to that expression in recital (B) to this Contract.

1.2 In this Contract:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Contract) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- (f) references to Clauses are to clauses of this Contract.

2 Confidentiality Obligations

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Contract;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
- (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
- (c) have agreed to terms similar to those in this Contract.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Contract. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.

- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Contract (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

- 5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

(b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]
[Address]

Attention: []

6 Governing law

- 6.1 This Contract shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Contract whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Contract.

IN WITNESS of the above this Contract has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____ Date:

Name: _____ Position:

For and on behalf of [name of Sub-licensee]

Signature: _____ Date:

Name: _____ Position:

SCHEDULE 6.1
IMPLEMENTATION PLAN

1 INTRODUCTION

1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2 OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Attachment 6.1 of the Order Form.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Buyer Cause*)).

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Buyer for approval within 20 Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of each design document;
 - (ii) the completion of the build phase;
 - (iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
 - (iv) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months, together with a high level plan for the rest of the programme, in conformity with the Buyer Requirements;
- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Buyer.

- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Buyer in accordance with Paragraph 3.1, the Buyer shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (i) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (ii) any other work in progress in relation to the Detailed Implementation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Buyer shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Buyer.
- 3.5 If the Buyer rejects the draft Detailed Implementation Plan:
- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Buyer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Buyer's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 4.1 Following the approval of the Detailed Implementation Plan by the Buyer:
- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Buyer every 3 months starting 3 months from the Effective Date;
 - (b) without prejudice to Paragraph 4.1(a), the Buyer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Buyer

within 20 Working Days of receiving such a request from the Buyer (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

- (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Buyer not less than 5 Working Days in advance of each meeting of the Service Management Board.

4.2 Save for any amendments which are of a type identified and notified by the Buyer (at the Buyer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Buyer Cause*).

4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Buyer.

5 GOVERNMENT REVIEWS

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

The Outline Implementation Plan is captured in Attachment 6.1 (Outline Implementation Plan) of the Order Form.

SCHEDULE 6.2
TESTING PROCEDURES

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”	any person appointed by the Buyer pursuant to Paragraph 10.1; and

“Testing Procedures”

the applicable testing procedures set out in this Schedule and Test Success Criteria set out in Attachment 6.2 (Test Success Criteria) of the Order Form.

2 RISK

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
 - (b) affect the Buyer's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (i) any Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Buyer to Proceed), the Supplier shall remain solely responsible for ensuring that:
- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Buyer Requirements;
 - (b) the Services are implemented in accordance with this Contract; and
 - (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3 TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Supplier shall not submit any Deliverable for Testing:
- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - (b) until the Buyer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

- 3.4 Prior to the issue of a Test Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Buyer and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

- 4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 4.2 The final Test Strategy shall include:
- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
 - (c) the method for mapping the expected Test results to the Test Success Criteria;
 - (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - (e) the procedure to be followed to sign off each Test;
 - (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
 - (g) the names and contact details of the Buyer's and the Supplier's Test representatives;
 - (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Buyer and/or third party involvement in the conduct of the Tests;
 - (i) the technical environments required to support the Tests; and
 - (j) the procedure for managing the configuration of the Test environments.

5 TEST PLANS

- 5.1 The Supplier shall develop Test Plans and submit these for the approval of the Buyer as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:

- (a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
- (b) a detailed procedure for the Tests to be carried out, including:
 - (i) the timetable for the Tests, including start and end dates;
 - (i) the Testing mechanism;
 - (ii) dates and methods by which the Buyer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (iv) the format and an example of Test progress reports and the process with which the Buyer accesses daily Test schedules;
 - (v) the process which the Buyer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (vi) the Test Schedule;
 - (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (viii) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Buyer in the Test Plans.

6 TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Attachment 6.2 (Test Success Criteria) of the Order Form; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for Testing;
- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and
 - (ii) a method to process the Test results to establish their content.

8 TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.
- 8.3 The Supplier shall notify the Buyer at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests, except where the Buyer has specified in writing that such attendance is not necessary.
- 8.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Buyer in relation to each Test:
 - (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - (a) an overview of the Testing conducted;
 - (b) identification of the relevant Test Success Criteria that have been satisfied;
 - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

- (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
- (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9 TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 9.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10 TEST WITNESSING

- 10.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - (a) shall actively review the Test documentation;
 - (b) will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - (c) shall not be involved in the execution of any Test;
 - (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - (e) may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
 - (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Buyer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and
 - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Buyer will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Buyer witnessing Tests and demonstrations of the Deliverables to the Buyer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Buyer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall:
 - (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - (b) subsequently prepare a written report for the Supplier detailing its concerns,and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 11.7 In the event of an inadequate response to the Buyer's report from the Supplier, the Buyer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a

Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

12 OUTCOME OF TESTING

- 12.1 The Buyer shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
- (a) the Buyer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).
- 12.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 13.1 The Buyer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- (a) the issuing by the Buyer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - (b) performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).
- 13.3 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out:
- (a) the applicable Test Issues ; and
 - (b) any other reasons for the relevant Milestone not being Achieved.

- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Buyer's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process) and the Buyer shall refuse to issue a Milestone Achievement Certificate where:
- (a) there is one or more Material Test Issue(s); or
 - (b) the information required under Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule 8.4 (Reports and Records Provision).
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 13.3); and
 - (b) where the Buyer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

- 1** **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 2** **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - (a) causes a Component to become unusable;
 - (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - (c) has an adverse impact on any other Component(s) or any other area of the Services;
- 3** **Severity Level 3 Test Issue:** a Test Issue which:
 - 3.1 causes a Component to become unusable;
 - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3 has an impact on any other Component(s) or any other area of the Services;but for which, as reasonably determined by the Buyer, there is a practicable workaround available;
- 4** **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 5** **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: **[insert description of Deliverables]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Contract.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 6.2 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Buyer]**

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Contract.

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 6.2 (*Testing Procedures*) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[Buyer]**

ANNEX 4: TEST SUCCESS CRITERIA

Test Success Criteria are specified in Attachment 6.2 (Test Success Criteria) of the Order Form.

SCHEDULE 7.1
CHARGES AND INVOICING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Achieved Profit Margin"	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
"Anticipated Profit Margin"	Contract Life the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
"Capped ADR"	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, [REDACTED] an alternative value by agreement by both Parties and documented in the relevant SoW;
"Certificate of Costs"	a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including: (i) base salary paid to the Supplier Personnel; (ii) employer's national insurance contributions; (iii) Employer Pension Contributions; (iv) car allowances; (v) any other contractual employment benefits; (vi) staff training; (vii) work place accommodation; (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and (ix) reasonable recruitment costs, as agreed with the Buyer; (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated

as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Buyer or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;

(c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

(d) Forecast Contingency Costs;

(e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

(i) Overhead;

(ii) financing or similar costs;

(iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;

(iv) taxation;

(v) fines and penalties;

(vi) amounts payable under Schedule 7.3 (*Benchmarking*); and

(vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Delay Payment Rate”

has the meaning given in Paragraph 1.1(a) of Part C;

“The Employer Pension Contributions”

means:

(a) in respect of CSPA Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the Admission Contract;

(b) in respect of NHSPA Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable

by the Supplier^[1] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Buyer);

(c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier^[2] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Buyer); and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Buyer in writing to constitute 'Employer Pension Contributions';

“European Standard”

in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

“Forecast Contingency Costs”

the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time);

“Guaranteed Maximum Price”

in relation to a Milestone, 110% of the Target Price for the relevant Milestone;

“Incurred Costs”

in relation to a Milestone, the sum of:

(a) the fixed day costs set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and

(b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

^[1] Currently 14.3%

^[2] Currently 14.3%

“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Group”	has the meaning given in Paragraph 1.5 of Part B;
“Milestone Retention”	has the meaning given in Paragraph 1.3 of Part B;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form ;
“Reimbursable Expenses”	reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer’s expenses policy current from time to time, but not including: (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the

	relevant Milestone and expressed as a percentage;
“Supporting Documentation”	sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Part D of Attachment 7.1 (Charges) of the Order Form;
“Work Day”	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Work Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Part B of Attachment 7.1 (Charges) of the Order Form and on the basis of the rates and prices specified in Part A of Attachment 7.1 (Charges) of the Order Form as more particularly set out in this Schedule.
- 1.2 Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - (b) **“Guaranteed Maximum Price with Target Cost”**, in which case the provisions of Paragraph 3 shall apply;
 - (c) **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
 - (d) **“Firm Price”**, in which case the provisions of Paragraph 5 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - (b) **“Volume Based”** pricing, in which case the provisions of Paragraph 6 shall apply; or
 - (c) **“Fixed Price”** in which case the provisions of Paragraph 4 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Part A of Attachment 7.1 (Charges) of the Order Form shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Part A of Attachment 7.1 (Charges) of the Order Form unless the Supplier has obtained the Buyer’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Buyer immediately in the event of any risk that the cap may be exceeded and the Buyer shall instruct the Supplier on how to proceed;

(iii) unless otherwise agreed by the Buyer in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:

(A) the total number of days expended by the Supplier in relation to the relevant Milestone; or

(B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and

(iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

(b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Buyer requests copies of such records, the Supplier shall make them available to the Buyer within 10 Working Days of the Buyer's request.

2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Part A of Attachment 7.1 (Charges) of the Order Form and the Capped ADR in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Part A of Attachment 7.1 (Charges) of the Order Form shall not be subject to Indexation.

3 GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS

3.1 Where Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form.

3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Buyer and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

TP is the Target Price for the relevant Milestone;

TC is the Target Cost for the relevant Milestone; and

IC is the Incurred Costs relating to the relevant Milestone.

- 3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Buyer and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Buyer for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form (the “**Guaranteed Maximum Price**”) Represented numerically:

(a) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) < GMP$,

then Milestone Payment = $TP + ((IC - TC)/2)$; or

(b) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) \geq GMP$,

then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone;

TC is the Target Cost for the relevant Milestone;

TP is the Target Price for the relevant Milestone; and

GMP is $TP * 1.1$, being the Guaranteed Maximum Price for the relevant Milestone.

- 3.4 The Supplier shall be entitled to Index the day costs set out in Table 3 of Part A of Attachment 7.1 (Charges) of the Order Form annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

4 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 4.1 Where Table 1 or Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Part A of Attachment 7.1 (Charges) of the Order Form.

- 4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

5 FIRM PRICE MILESTONE PAYMENTS

- 5.1 Where Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Part A of Attachment 7.1 (Charges) of the Order Form.
- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

6 VOLUME BASED SERVICE CHARGES

- 6.1 Where Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form.
- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Part A of Attachment 7.1 (Charges) of the Order Form shall be subject to annual Indexation.

7 REIMBURSABLE EXPENSES

- 7.1 Where:
- (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
 - (b) the Buyer so agrees in writing,
- the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.
- 7.2 The Buyer shall provide a copy of its current expenses policy to the Supplier upon request.
- 7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

- (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

PART B: CHARGING MECHANISMS

1 MILESTONE PAYMENTS

1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Buyer for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.

1.2 Each invoice relating to a Milestone Payment shall be supported by:

- (a) a Milestone Achievement Certificate; and
- (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

1.3 The “**Milestone Retention**” for each Milestone shall be calculated as follows:

- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;
- (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

1.4 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
- (b) no later than 60 Working Days after the invoice referred to in Paragraph 1.3(a) has been issued, the Supplier shall:
 - (i) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (ii) issue to the Buyer an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);

- (iii) where a credit note is to be issued to the Buyer pursuant to Paragraph 1.4(b)(ii), repay to the Buyer a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.
- 1.5 Where Milestones are stated in Table 4 of Part A of Attachment 7.1 (Charges) of the Order Form to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
 - (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Buyer for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and
 - (b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (i) submit to the Buyer a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (ii) issue to the Buyer an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (iii) where a credit note is to be issued to the Buyer pursuant to Paragraph 1.5(b)(ii), repay to the Buyer a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.
- 1.6 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.
- 1.7 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(iii) or 1.5(b)(iii), the Supplier shall not be entitled to invoice the Buyer for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

Release of Milestone Retentions

- 1.8 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Buyer for an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge*”

Number” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 3) of Part B of Attachment 7.1 (Charges) of the Order Form and corresponding CPP Milestone Charge Number identified in Paragraph 2 of Attachment 6.2 (Testing Procedures) of the Order Form as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

2 SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Part B of Attachment 7.1 (Charges) of the Order Form.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- (a) commences on a day other than the first day of a month; and/or
 - (b) ends on a day other than the last day of a month,
- the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Buyer unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3 OPTIONAL SERVICES

If the Buyer gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Part B of Attachment 7.1 (Charges) of the Order Form; and
- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Part B of Attachment 7.1 (Charges) of the Order Form,

in both cases using the relevant rates and prices specified in Part A of Attachment 7.1 (Charges) of the Order Form.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Buyer in respect of that Key Milestone. Delay Payments shall accrue:

- (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
- (b) from (but excluding) the relevant Milestone Date to (and including) the earlier of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
- (c) on a daily basis, with any part day’s Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

- (a) where the Supplier has given the Buyer less than 3 months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone;
- (b) where the Supplier has given the Buyer between three (3) months’ and six (6) months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone; or
- (c) where the Supplier has given the Buyer more than 6 months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Part B of Attachment 7.1 (Charges) of the Order Form for the Key Milestone.

1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within 5 Working Days of the date the notice is served:

- (a) pay to the Buyer in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:
 - (i) in the case of a notice served pursuant to Paragraph 1.2(b), five (5) days of Delay Payments; or
 - (ii) in the case of a notice served pursuant to Paragraph 1.2(c), ten (10) days of Delay Payments in accordance with paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

- (b) issue a credit note to the Buyer in respect of the relevant amount.

Failure to make payment within 10 Working Days of the Supplier’s notice shall invalidate the notice.

- 1.4 Any amounts paid to the Buyer pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:
- (a) does not occur; or
 - (b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.
- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Buyer will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Buyer to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:
- (a) issue a credit note to the Buyer in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
 - (b) pay to the Buyer as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 PAYMENTS FOR DELAYS DUE TO BUYER CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 31.1(iii)(D) (*Buyer Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:
- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - (i) can demonstrate it has incurred solely and directly as a result of the Buyer Cause; and
 - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31.1 (*Buyer Cause*)

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Buyer Cause;

- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:

- (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

- | | |
|-----|---|
| NTP | is the revised Target Price for the relevant Milestone; |
| TP | is the original Target Price for the relevant Milestone; |
| AC | is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Buyer Cause; and |
| x | is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and |

- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);

- (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Part A of Attachment 7.1 (Charges) of the Order Form; and

- (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Buyer paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Buyer Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

- 2.2 The Supplier shall provide the Buyer with any information the Buyer may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

- 3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

- 3.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 1% deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

- SC is the total Service Credits for the relevant Service Period;
- TSP is the total Service Points that have accrued for the relevant Service Period;
- X is 1%; and
- AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.5 Service Credits shall be shown as a deduction from the amount due from the Buyer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4 CHANGES TO CHARGES

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
 - (a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
 - (b) in no event exceed the Maximum Permitted Profit Margin.
- 4.2 The Buyer may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

5 INDEXATION

- 5.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.
- 5.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 5.3 Except as set out in this Paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

6 ALLOWABLE ASSUMPTIONS

- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 6.2 During each Verification Period, the Buyer shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Buyer deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Buyer with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
- (a) on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Part D of Attachment 7.1 (Charges) of the Order Form; or
 - (b) on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Part D of Attachment 7.1 (Charges) of the Order Form,
- in which case Paragraph 6.5 shall apply.
- 6.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;

- (b) the Supplier may (subject to Paragraph 6.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
- (c) where the Supplier proposes a Change to the Charges under Paragraph 6.5(b), the Change Request shall reflect the requirements of the table in Part D of Attachment 7.1 (Charges) of the Order Form, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Part D of Attachment 7.1 (Charges) of the Order Form.

7 RISK REGISTER

The Parties shall review the Risk Register set out in Part C of Attachment 7.1 (Charges) of the Order Form from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART D: EXCESSIVE SUPPLIER PROFIT MARGIN

1 LIMIT ON SUPPLIER PROFIT MARGIN

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - (a) the Supplier shall, within 5 Working Days of delivery to the Buyer of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - (b) the Buyer (acting reasonably) may agree or reject the proposed adjustments;
 - (c) if the Buyer rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - (d) if the Parties cannot agree such revised adjustments and the Buyer terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (*Termination by the Buyer*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Buyer of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

- 1.1 The Buyer shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
 - (a) comply with the requirements of the Buyer's e-invoicing system;
 - (b) prepare and provide to the Buyer for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Buyer may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - (c) make such amendments as may be reasonably required by the Buyer if the template invoice outlined in (b) is not approved by the Buyer.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Buyer's e-invoicing system, or that it contains the following information:
 - (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Contract;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc.);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Buyer under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;

- (l) reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);
 - (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - (o) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Buyer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Buyer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Buyer, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Buyer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation through the Buyer's nominated email address as follows:
- accounts.payable@nsandi.com
- or if that is not possible, posted to:
- Accounts Payable, NS&I, Riverside House, 2A Southwark Bridge Road, London SE1 9HA.
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing.
- 1.8 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Buyer's requirements set out in this Part E, the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.9 If the Buyer fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 thirty (30) after a reasonable time has passed.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Buyer shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 1: PRICING MECHANISM

1 TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

Found in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

2 TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

3 TABLE 3: DAY COST FOR CALCULATION OF GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

4 TABLE 4: GUARANTEED MAXIMUM PRICE WITH TARGET COSTS CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

5 TABLE 5: FIXED PRICES

Found in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

6 TABLE 6: FIRM PRICES

Not used – Template included in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

7 TABLE 7: VOLUME CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part A: Pricing Mechanism of the Order Form

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

1 TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

Found in Attachment 7.1 (Charges) Part B: Charging Mechanism and Adjustments of the Order Form

2 TABLE 2: SERVICE CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part B: Charging Mechanism and Adjustment of the Order Form

3 TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

Not used – Template included in Attachment 7.1 (Charges) Part B: Charging Mechanism and Adjustment of the Order Form

4 TABLE 4: OPTIONAL SERVICES SERVICE CHARGES

Not used – Template included in Attachment 7.1 (Charges) Part B: Charging Mechanism and Adjustment of the Order Form

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I **[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Buyer]** of **[insert name of Supplier]**, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the **[insert name/reference for the Contract]** (the “Contract”) in relation to the following [Milestone/Milestone Group]:

[Insert details of Milestone/Milestone Group]

- 1 has been reasonably and properly incurred in accordance with **[name of Supplier]**’s books, accounts, other documents and records;
- 2 is accurate and not misleading in all key respects; and
- 3 is in conformity with the Contract and with all generally accepted accounting principles within the United Kingdom.

Signed **[Director of Finance or equivalent]**

[Name of Supplier]

ANNEX 4: RISK REGISTER

Found in Attachment 7.1 (Charges) Part C: Risk Register

ANNEX 5: ALLOWABLE ASSUMPTIONS

Found in Attachment 7.1 (Charges) Part D: Allowable Assumptions

SCHEDULE 7.2
PAYMENTS ON TERMINATION

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Personnel”	Supplier	any Supplier Personnel who: (i) at the Termination Date: a) are employees of the Supplier; b) are Dedicated Supplier Personnel; c) have not transferred (and are not in scope to transfer at a later date) to the Buyer or the Replacement Supplier by virtue of the Employment Regulations; and (ii) are dismissed or given notice of dismissal by the Supplier within: d) 40 Working Days of the Termination Date; or e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and (iv) the Supplier can demonstrate to the satisfaction of the Buyer: a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; b) are genuinely being dismissed for reasons of redundancy; and c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;
“Breakage Costs Payment”		an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Compensation Payment”		the payment calculated in accordance with Paragraph 6;
“Contract Breakage Costs”		the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party

		Contracts as a direct result of the early termination of this Contract;
“Dedicated Personnel”	Supplier	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Buyer whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”		the Supplier Profit paid or payable to the Supplier under this Contract for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”		the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Buyer based on the time spent by such employee on the Services as a proportion of the total Service duration: (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Buyer Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”		a written request sent by the Buyer to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Buyer exercised its right under Clause 33.1(a) (<i>Termination by the Buyer</i>) to terminate this Contract for convenience on a specified Termination Date;
“Shortfall Period”		has the meaning given in Paragraph 6.2;
“Termination Estimate”		has the meaning given in Paragraph 11.2;
“Third Party Contract”		a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Attachment 4.4 (<i>Third Party Contracts</i>) of the Order Form;
“Total Costs Incurred”		the Costs incurred by the Supplier up to the Termination Date in the performance of this Contract and detailed in the

Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

“Unrecovered Costs”

the Costs incurred by the Supplier in the performance of this Contract (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Contract would have been payable by the Buyer after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

“Unrecovered Payment”

an amount equal to the lower of:

(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and

(b) the amount specified in Paragraph 4; and

“Unrecovered Profit”

(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Buyer*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Contract which:

- (a) would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Contract;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Buyer shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Buyer when compared with redundancy, then the Buyer shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Buyer in accordance with Schedule 8.5 (*Exit Management*); and
- (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of the Buyer, the Buyer shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Contract; and/or
- (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Attachment 7.2 (Maximum Payments on Termination) of the Order Form;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges that but for the termination of this Contract would have been payable by the Buyer after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Buyer's request, assigning any Third Party Contracts and Sub-contracts to the Buyer or a third party acting on behalf of the Buyer; and
- (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Buyer or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Buyer or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6 COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Buyer*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the "**Shortfall Period**" means:

- (a) where the Buyer terminates this Contract pursuant to Clause 33.1(a) (*Termination by the Buyer*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of three hundred and sixty-five (365) days; or
- (b) where the Supplier terminates this Contract pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period

from (and including) the date of the non-payment by the Buyer to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

- (a) the relevant limit set out in Attachment 7.2 (Maximum Payments on Termination) of the Order Form; and
- (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Buyer pursuant to Clause 33.1(a) (*Termination by the Buyer*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Buyer to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

9 SET OFF

The Buyer shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 NO DOUBLE RECOVERY

10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Buyer makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

11.1 The Buyer may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.

- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Buyer based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Buyer may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Buyer to terminate this Contract.
- 11.4 If the Buyer issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Buyer.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

Not used – Template included in Attachment 7.2 (Maximum Payments on Termination of the Order Form]

SCHEDULE 7.3

BENCHMARKING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Buyer elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
“Good Value”	in relation to a Benchmarked Service, that: (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at

least as good as the value for money of the Upper Quartile;
and

(b) any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

“Upper Quartile”

the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Buyer shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Buyer in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Buyer shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Attachment 7.3 (Approved Benchmarkers) of the Order Form or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Buyer shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Buyer shall be entitled to pay the Benchmarker’s costs and expenses in full and to recover the Supplier’s share from the Supplier.

4 BENCHMARK REVIEW

- 4.1 The Buyer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

- (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
 - (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - (b) any front-end investment and development costs of the Supplier;
 - (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - (d) the extent of the Supplier's management and contract governance responsibilities;
 - (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 BENCHMARK REPORT

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - (d) illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Buyer but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Buyer shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:

- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Buyer the difference between the Charges paid by the Buyer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;
 - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Buyer, constitute a Supplier Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

Included in Attachment 7.3 (Approved Benchmarkers) of the Order Form

ANNEX 2: CONFIDENTIALITY CONTRACT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “Supplier”); and
- (2) [insert name] of [insert address] (the “Benchmarker” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Buyer] (the “Buyer”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Buyer of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

1 Interpretation

1.1 In this Contract, unless the context otherwise requires:

“Confidential Information”

means:

- a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Contract that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- b) other Information provided by the Supplier pursuant to this Contract to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;
- c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors,

officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

d) Information derived from any of the above,

but not including any Information that:

e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;

f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;

g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or

h) was independently developed without access to the Confidential Information;

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

"Permitted Purpose" has the meaning given to that expression in recital (B) to this Contract.

1.2 In this Contract:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Contract) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- (f) references to Clauses are to clauses of this Contract.

2 Confidentiality Obligations

2.1 In consideration of the Supplier providing Confidential Information to the Benchmark, the Benchmark shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Contract;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmark) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Benchmark may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
- (b) have been informed by the Benchmark of the confidential nature of the Confidential Information; and
- (c) have agreed to terms similar to those in this Contract.

3.2 The Benchmark shall be entitled to disclose Confidential Information to the Buyer for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of Schedule 7.3 (*Benchmarking*) to the Contract.

3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.

3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:

- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:

- (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Contract;
- (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Contract.

4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Contract. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.

4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Contract (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

(b) if to be given to the Benchmarker shall be sent to:

[Name] of [Organisation]
[Address]

Attention: []

6 Governing law

6.1 This Contract shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Contract whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Contract.

IN WITNESS of the above this Contract has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Benchmarker]

Signature: _____

Date:

Name:

Position:

SCHEDULE 7.4
FINANCIAL DISTRESS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Applicable Financial Indicators"	means the financial indicators from Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form which are to apply to the Monitored Suppliers as set out in Paragraph 2 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
"Credit Rating Level"	a credit rating level as specified in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Credit Rating Threshold"	the minimum Credit Rating Level for each entity in the FDE Group as set out in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"FDE Group"	means the Supplier, Key Sub-contractors and the Monitored Suppliers;
"Financial Indicators"	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Monitored Suppliers"	means those entities specified at Paragraph 2 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form;
"Rating Agencies"	the rating agencies listed in Part B of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form.

2 WARRANTIES AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Buyer for the benefit of the Buyer that as at the Effective Date:
- (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part B of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form; and
 - (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 The Supplier shall:
- (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each in Paragraph 1 of Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
- (a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form ceases to hold a Credit Rating for that entity.
- 2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:

- (a) be a single report with separate sections for each of the FDE Group entities;
- (b) contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

- (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

- (g) any one of the Financial Indicators set out at Part A of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Buyer becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Buyer shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Buyer, meet the Buyer as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
- (b) where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (i) submit to the Buyer for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Buyer may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key

Sub-contractors and/or the Guarantor as the Buyer may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

- 4.4 The Buyer shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Buyer does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Buyer within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Buyer or referred to the Dispute Resolution Procedure under Paragraph 4.5.
- 4.5 If the Buyer considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
- 4.6 Following approval of the Financial Distress Remediation Plan by the Buyer, the Supplier shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Buyer, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
 - (ii) provide a written report to the Buyer setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Buyer for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Buyer and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Buyer and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Buyer, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Buyer;
 - (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Buyer (which may include making price sensitive information available to Buyer nominated personnel through confidential arrangements, subject to their consent); and
 - (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

The Financial Indicators are documented in Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form

Monitored Suppliers

The Monitored Suppliers are documented in Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form

6 TERMINATION RIGHTS

The Buyer shall be entitled to terminate this Contract under Clause 33.1(b) (*Termination by the Buyer*) if:

- (a) the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.3(c);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7 PRIMACY OF CREDIT RATINGS

- 7.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating

Thresholds specified for those entities in Part C of Attachment 7.4 (Financial Indicators, Rating Agencies and Credit Ratings) of the Order Form, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
- (b) the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Buyer in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Buyer (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

Contained in Part B (Rating Agencies) of Attachment 7.4 (Financial Distress) of the Order Form

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Contained in Part C (Credit Ratings) of Attachment 7.4 (Financial Distress) of the Order Form

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

Contained in Part D (Calculation Methodology for Financial Indicators) of Attachment 7.4 (Financial Distress) of the Order Form

ANNEX 4: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a) the Buyer’s internal and external auditors; (b) the Buyer’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”;	the final reconciliation report to be provided by the Supplier to the Buyer pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Buyer in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	a Change which: (a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: (i) 5% or more; or (ii) £1m or more;

“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
“Open Book Data”	complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to: (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Services including an analysis showing: (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and (iv) Reimbursable Expenses; (c) Overheads; (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; (e) the Supplier Profit achieved over the Term and on an annual basis; (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Buyer in order to achieve, the following objectives:

1.1 Understanding the Charges

- (a) for the Buyer to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));

1.2 Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

1.3 Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Buyer of the Financial Transparency Objectives and the Buyer's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Buyer and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Buyer of the designation and shall prepare and deliver to the Buyer within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
 - (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Buyer shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Buyer's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Buyer and Programme Board on an information only basis and the Buyer and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Buyer, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Buyer
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

1.2 The Supplier shall provide to the Buyer the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract. The Buyer shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Contract;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Buyer may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Buyer in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

2 FINANCIAL MODEL

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract

Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Buyer; and

(c) the Buyer shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:

(i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Buyer with such supporting evidence as is required to address the Buyer's concerns within 10 Working Days of such notification and the Buyer shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

(ii) the Buyer has approved the relevant Financial Report.

2.2 Following approval by the Buyer of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Buyer and the Supplier. If there is a Dispute regarding a Financial Report, the Buyer's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Buyer, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4 KEY SUB-CONTRACTORS

4.1 The Supplier shall, if requested by the Buyer, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

(a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and

(b) on written request by the Buyer, provide the Buyer or procure that the Buyer is provided with:

- (i) full copies of audit reports for the Key Sub-contractors. The Buyer shall be entitled to rely on such audit reports; and
- (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

1.1 The Buyer, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and proposed or actual variations to such Charges and payments);
- (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- (d) to verify the Certificate of Costs and/or the Open Book Data;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
- (h) to obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (j) to carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (o) to review the accuracy and completeness of the Registers;
 - (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (r) to review the Supplier's compliance with the Standards;
 - (s) to inspect the Buyer Assets, including the Buyer's IPRs, equipment and facilities, for the purposes of ensuring that the Buyer Assets are secure and that any register of assets is up to date; and/or
 - (t) to review the integrity, confidentiality and security of the Buyer Data.
- 1.2 Except where an audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

- 2.1 The Buyer shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Buyer deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Buyer's obligations of confidentiality, the Supplier shall on demand provide the Buyer and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Buyer within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the

applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

- 2.4 The Buyer shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Buyer for all the Buyer's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 As an alternative to the Buyer's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Buyer may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Buyer under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Buyer has unfettered access to:
 - (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - (a) the Supplier has committed a Default, the Buyer may (without prejudice to any rights and remedies the Buyer may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Buyer has overpaid any Charges, the Supplier shall pay to the Buyer:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Buyer up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Buyer in undertaking the audit,
- the Buyer may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Buyer has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Buyer.

SCHEDULE 7.6

ANTICIPATED SAVINGS

Captured in Attachment 7.6 (Anticipated Savings) of the Order Form

SCHEDULE 8.1

GOVERNANCE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Board Member”	the initial persons appointed by the Buyer and Supplier to the Boards as set out in Attachment 8.1 (Representation and Structure of Boards) of the Order Form and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Boards”	the Service Management Board, Programme Board, Change Management Board, Technical Board, Risk Management Board and any other boards described in Attachment 8.1, and as further instructed by the Buyer from time to time, and “Board” shall mean any of them;
“Change Management Board”	the body described in Paragraph 6;
“Project Managers”	the individuals appointed as such by the Buyer and the Supplier in accordance with Paragraph 1; and
“Risk Management Board”	the body described in Paragraph 8;
“Service Management Board”	the body described in Paragraph 4; and
“Technical Board”	the body described in Paragraph 7.

2 MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Buyer shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

3 BOARDS

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Buyer for the purposes of this Contract on which both the Supplier and the Buyer shall be represented.
- 3.2 In relation to each Board, the:
 - (a) Buyer Board Members;
 - (b) Supplier Board Members;
 - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);

- (d) location of the Board's meetings; and
- (e) planned start date by which the Board shall be established,

shall be as set out in Attachment 8.1 (Representation and Structure of Boards) of the Order Form.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Buyer Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Buyer for each Board as identified in Attachment 8.1 (Representation and Structure of Boards) of the Order Form. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
 - (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the Board meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each

Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE SERVICE MANAGEMENT BOARD

The Service Management Board shall be responsible for the executive management of the Services and shall:

- (a) be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
- (c) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- (d) review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- (e) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- (f) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- (g) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5 ROLE OF THE PROGRAMME BOARD

5.1 The Programme Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Programme Board shall:

- (a) ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Buyer and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;

- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

6 ROLE OF THE CHANGE MANAGEMENT BOARD

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

6.2 The Change Management Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Buyer to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (b) provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- (c) approve or reject (close) all proposed Changes.

7 ROLE OF THE TECHNICAL BOARD

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Buyer.

7.2 The Technical Board shall:

- (a) ensure compliance with the Standards;
- (b) grant dispensations for variations from such compliance where appropriate;
- (c) assure the coherence and consistency of the systems architecture for the Supplier Solution;

- (d) monitor developments in new technology and reporting on their potential benefit to the Services;
- (e) provide advice, guidance and information on technical issues; and
- (f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Buyer.

8 ROLE OF THE RISK MANAGEMENT BOARD

8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.

8.2 The Risk Management Board shall:

- (a) provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
- (b) identify the risks to be reported to the Programme Board via the regular risk reports;
- (c) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (d) ratify or refuse requests to close risks on the Risk Register; and
- (e) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

9 CONTRACT MANAGEMENT MECHANISMS

9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.

9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:

- (a) the identification and management of risks;
- (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

10 ANNUAL REVIEW

10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

- 10.2 The meetings shall be attended by the System Integration Lead of the Supplier and the Commercial Manager of the Buyer and any other persons considered by the Buyer necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Captured in Attachment 8.1 (Representation and Structure of Boards of the Order Form

SCHEDULE 8.2
CHANGE CONTROL PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Buyer Change Manager”	the person appointed to that position by the Buyer from time to time and notified in writing to the Supplier or, if no person is notified, the Buyer Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Buyer or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - (c) the Buyer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;

- (e) save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2; and
 - (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 6.2, then:
 - (a) unless the Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 The Supplier shall:
 - (a) within 10 Working Days of the Buyer's signature and issue of a Change Authorisation Note, deliver to the Buyer a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.

3 COSTS

- 3.1 Subject to Paragraph 3.3:
 - (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Buyer shall not be required to pay any such costs if:
 - (i) such costs are below £10,000;
 - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or

(iii) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Attachment 7.1 (Charges) of the Order Form. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Buyer as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Buyer issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Buyer.

4.4 If the Buyer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Buyer and provided that sufficient information is received by the Buyer to fully understand:

(a) The nature of the request for clarification; and

(b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Buyer to provide that clarification. The Buyer shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
 - (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;
 - (c) any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Buyer Data, as set out in the Services Description;
 - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (iv) other services provided by third party contractors to the Buyer, including any changes required by the proposed Contract Change to the Buyer's IT infrastructure;
 - (d) details of the cost of implementing the proposed Contract Change;
 - (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - (h) such other information as the Buyer may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Buyer is the Receiving Party and the Buyer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Buyer within 10 Working Days of receiving such notification. At the Buyer's discretion, the Parties

may repeat the process described in this Paragraph 5.4 until the Buyer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:

- (a) be based on the Financial Model;
- (b) facilitate the Financial Transparency Objectives;
- (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
- (d) include full disclosure of any assumptions underlying such Impact Assessment;
- (e) include evidence of the cost of any assets required for the Change; and
- (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 BUYER'S RIGHT OF APPROVAL

6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Buyer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Buyer does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Buyer approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Buyer for its signature. Following receipt by the Buyer of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Change Authorisation Note shall constitute (or, where the Buyer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.

- 6.3 If the Buyer does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Buyer would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Buyer of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8 FAST-TRACK CHANGES

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £100,000 and the proposed Contract Change is not significant (as determined by the Buyer acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9 OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Buyer;
 - (b) require a change to this Contract;
 - (c) have a direct impact on use of the Services; or
 - (d) involve the Buyer in paying any additional Charges or other costs.
- 9.2 The Buyer may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.
- 9.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Buyer of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Buyer when the Operational Change is completed.

10 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Buyer Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE BUYER:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

SCHEDULE 8.3
DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Buyer or the Supplier which is relevant to this Contract; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Buyer Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Buyer) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Buyer it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the

Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Buyer.

- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

- (a) in Paragraph 4.2(c), 10 Working Days;
- (b) in Paragraph 5.2, 10 Working Days;
- (c) in Paragraph 6.2, 5 Working Days; and
- (d) in Paragraph 7.2, 10 Working Days.

- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Buyer may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Buyer fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Buyer and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Buyer's Commercial Manager and the Supplier's Vice President for UK Banking & Capital Markets.

- 4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 MEDIATION

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
 - (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as

may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Buyer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Buyer of its intentions and the Buyer shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

7.3 If the Buyer serves a Counter Notice, then:

- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
- (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Buyer does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).

9.2 If at any time following the issue of a Dispute Notice, the Buyer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Buyer shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Buyer’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Buyer.

- 9.4 The Buyer shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Buyer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Buyer shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Buyer has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Buyer;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Buyer considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Buyer, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
 - (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
 - (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,
- and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.
- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Buyer or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

SCHEDULE 8.4
REPORTS AND RECORDS PROVISIONS

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Buyer for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Part A of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form (once approved, the “**Transparency Reports**”).
- 1.2 If the Buyer rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Buyer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in Part A of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2 OTHER REPORTS

The Buyer may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 2 (together “**Records**”):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;

- (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Buyer on request, subject to the Buyer giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Buyer.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Buyer:
 - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4 Virtual Library

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Buyer, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in accordance with the requirements outlined in this Schedule.
- 4.2 The Supplier shall ensure that the Virtual Library is:
 - (a) capable of holding and allowing access to the information described in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;

- (b) structured so that each document uploaded has a unique identifier which is automatically assigned;
 - (c) readily accessible by the Buyer at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Buyer from time to time,
 - (d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
 - (e) structured and maintained in accordance with the security requirements as set out in this Contract including those set out in Schedule 2.4 (Security Management);
 - (f) created and based on open standards in Schedule 2.3 (Standards); and
 - (g) backed up on a secure off-site system.
- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Buyer pursuant to Clause 17.1 (Project Specific IPR) of this Contract.
- 4.4 The Supplier shall upload complete and accurate information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where the Buyer has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Buyer email address at: martin.rollmann@nsandi.com or such other address notified to the Supplier by the Buyer from time to time.
- 4.6 Except for notices under Clause 44.4 or items covered by Clause 44.6, where the Supplier is under an obligation to provide information to the Buyer in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Buyer with that information provided that the Buyer has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Buyer access to up-to-date information, Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) access to view and download the specified information in the Virtual Library in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library)

of the Order Form subject upon the occurrence of the event specified in the column marked Access Permission in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.

- 4.9 Where Access Permission is not listed (in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) from the Initial Upload Date.
- 4.10 Where Access Permission is specified as being granted to the Buyer's Third Party Auditor (prior to the Buyer being granted access) it shall:
- (a) be entitled to access, view and download information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under paragraph 4.10(b) of this Schedule); and
 - (b) report to the Buyer (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.
- 4.14 In the event of a conflict between any requirement in this Contract (excluding Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form) for the Supplier to provide information to the Buyer and the requirements set out in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form, the requirement elsewhere in this Contract shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.

- 4.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Buyer relating to the use of the Virtual Library.
- 4.17 On request by the Buyer the Supplier shall provide the Buyer's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: TRANSPARENCY REPORTS

Transparency Reports and Records to Upload to the Virtual Library are detailed in Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Contract, its Schedules and all amendments to such documents.
2. All other documents which this Contract expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Buyer Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Buyer of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Transparency Reports and Records to Upload to the Virtual Library are detailed in Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) of the Order Form.

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

SCHEDULE 8.5
EXIT MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Application Interface” or “API”	Programming	Means a piece of software that facilitates access to the Supplier’s application(s) to provide access to business functionality and/or Buyer Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-api-technical-and-data-standards
“Emergency Exit”		any termination of this Contract which is a: (a) termination of the whole or part of this Contract in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or (c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Contract”		an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”		those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”		has the meaning given in Paragraph 3.1;
“Exit Manager”		the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”		the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the

	agreed form from the Supplier to the Buyer of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or as a result of the expiry of the Initial Term or any Extension Period;
“Registers”	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Buyer; and
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 7.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and

- (E) use (including technical specifications); and
 - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Buyer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
 - (c) agree the format of the Registers with the Buyer as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Buyer Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- (g) such other material and information as the Buyer shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Buyer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Buyer may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Buyer within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Buyer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Buyer.

3.4 The Supplier may charge the Buyer for its reasonable additional costs to the extent the Buyer requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

4.1 The Buyer may require the Supplier to enter into the Ethical Wall Contract at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Contract, the Supplier will return a signed copy of the Ethical Wall Contract within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Contract will be borne solely by the Supplier.

5 EXIT PLAN

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Buyer an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Buyer and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Buyer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Buyer shall require to enable the Buyer or its sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the Replacement Supplier and/or the Buyer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Buyer's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (h) the scope of the Termination Services that may be required for the benefit of the Buyer (including such of the services set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;

- (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (l) procedures to deal with requests made by the Buyer and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
- (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Buyer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Buyer and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.

5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Buyer following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Buyer for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Buyer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Buyer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

6.1 The Buyer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.

6.2 The Buyer shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Buyer may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Buyer pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Buyer any reasonable assistance requested by the Buyer to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Buyer and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer.

- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Buyer's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- (a) cease to use the Buyer Data;
 - (b) provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form (or such other format as reasonably required by the Buyer);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Buyer Data and promptly certify to the Buyer that it has completed such deletion;
 - (d) return to the Buyer such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Buyer Software and any other software licensed by the Buyer to the Supplier under this Contract;
 - (ii) all materials created by the Supplier under this Contract in which the IPRs are owned by the Buyer;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Buyer; and
 - (iv) any items that have been on-charged to the Buyer, such as consumables;
 - (e) vacate any Buyer Premises unless access is required to continue to deliver the Services;
 - (f) provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:

- (i) such information relating to the Services as remains in the possession or control of the Supplier; and
- (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Buyer's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Buyer shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - (i) which, if any, of:
 - the Exclusive Assets that are not Transferable Assets; and
 - the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

- (b) which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the “**Transferring Contracts**”),

in order for the Buyer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Buyer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Buyer and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Buyer to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Buyer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

- 7.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) on payment for the same.

- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Buyer) for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procure a suitable alternative to such assets and the Buyer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Buyer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

- 7.7 The Buyer shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

- (b) once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until such time as the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
 - (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Clause 17 (Transfer and Licences Granted by the Supplier).

8 SUPPLIER PERSONNEL

- 8.1 The Buyer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Buyer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Buyer and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Buyer or, at the direction of the Buyer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Buyer may require the Supplier to provide the Termination Services), the Buyer shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out

in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 9.2 Where the Buyer requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
- (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Buyer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Buyer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

1 The Termination Services to be provided by the Supplier shall include such of the following services as the Buyer may specify:

- (a) ceasing all non-critical Software changes (except where agreed in writing with the Buyer);
- (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
- (d) delivering to the Buyer the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
- (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Buyer with any problem logs which have not previously been provided to the Buyer;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Buyer and/or the Replacement Supplier;
- (k) providing assistance and expertise as necessary to support the Buyer and/or the Replacement Supplier develop the migration plan for business operations and Buyer Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Buyer Data;

- (l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Buyer and/or Replacement Supplier;
- (m) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Buyer (acting reasonably) at the time of termination or expiry;
- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) generating a computer listing of the Source Code of Software written for the Buyer as part of the Services in a form and on media reasonably requested by the Buyer;
- (q) agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (r) delivering copies of the production databases (with content listings) to the Buyer's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Buyer;
- (s) assisting with the loading, testing and implementation of the production databases;
- (t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (u) in respect of the maintenance and support of the Supplier System, providing historical performance data as specified by the Buyer;
- (v) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Buyer (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (w) providing an information pack listing and describing the Services for use by the Buyer in the procurement of the Replacement Services;
- (x) answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Services;
- (y) agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Buyer Data to the Buyer and/or the Replacement Supplier;
- (z) providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Buyer and/or the Replacement Supplier;

- (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (aa) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Buyer at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Buyer Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;

- (c) agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Buyer; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and
- (b) the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Contract is dated [] 20[]

Between

- (1) [INSERT NAME OF BUYER] (the "**Buyer**") [acting on behalf of the Crown] of [insert Buyer's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

- A. The Buyer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("Contract") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- B. The Buyer is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- C. The Buyer has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Buyer or of a procurement service provider acting on behalf of the Buyer who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- D. Pursuant to Regulation 41 of the PCR, the Buyer is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Buyer has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Buyer under existing contractual arrangements or as a subcontractor under those same arrangements.
- E. The parties wish to enter into this Contract to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"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 common Control of that body corporate from time to time;

"Contract" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

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

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

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Buyer under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for [] dated [] between the Buyer and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Contract as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Buyer as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Buyer has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Buyer as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

"Parties" means the Buyer and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital B to this Contract;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Buyer or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Buyer or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Contract.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Contract shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Buyer to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates

or Representatives and the duties owed to the Buyer under the Contract or pursuant to an open and transparent ITT Process;

2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Buyer under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and

2.1.3 where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

2.2.1 Not assign any of the Conflicted Personnel to the Bid Team at any time;

2.2.2 Provide to the Buyer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;

2.2.3 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:

(a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or

(b) which would or could in the opinion of the Buyer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;

2.2.4 Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;

2.2.5 Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Contract are entered into as necessary between the Buyer and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Buyer;

2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Contract;

2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Contract ensure adherence to the ethical wall arrangements;

2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and

- 2.2.10 comply with any other action as the Buyer, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:
- 2.3.1 notify the Buyer immediately of all perceived, potential and/or actual conflicts of interest that arise;
- 2.3.2 submit in writing to the Buyer full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- 2.3.3 seek the Buyer's approval thereto,
- which the Buyer shall have the right to grant, grant conditionally or deny (if the Buyer denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Buyer grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Buyer to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Buyer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Buyer there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Buyer.
- 2.6 The Buyer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Buyer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Contract.
- 2.8 The actions of the Buyer pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.
- 2.9 In no event shall the Buyer be liable for any bid costs incurred by:
- 2.9.1 the Counterparty or any Affiliate or Representative; or
- 2.9.2 any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Contract, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:

2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and

2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Buyer shall have the right to terminate this Contract and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

It is the sole responsibility of the Counterparty to comply with the terms of this Contract. No approval by the Buyer of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Buyer shall discharge the Counterparty's obligations.

4 WAIVER AND INVALIDITY

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Contract or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Contract is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Contract or affect the validity or enforceability of the provisions of this Contract in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

5.1 Subject to clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.

5.2 The Buyer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

5.2.1 any Central Government Body; or

5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer; and

5.2.3 the Counterparty shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer may reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Contract has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Contract but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

The parties acknowledge and agree that the Buyer is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Buyer may disclose the contents of this Contract to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8 NOTICES

8.1 Any notices sent under this Contract must be in writing.

8.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Contract:

Counterparty	Buyer

Contact		
Address		
Email		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 9.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10 TERM

Each party's obligations under this Contract shall continue in full force and effect for period of [] years from the Effective Date.

11 GOVERNING LAW AND JURISDICTION

- 11.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

Signed by the Buyer

Name:

Signature:

Position in Buyer:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART 1: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”		has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”		has the meaning given in Paragraph 4.2(b);
“Department”		a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
“Disaster”		the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for any period or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Plan”	Recovery	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Services”	Recovery	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster System”	Recovery	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Plan”	Continuity	has the meaning given in Paragraph 2.2(a)(iv).
“Related Provider”	Service	any person who provides services to the Buyer in relation to this Contract from time to time;
“Review Report”		has the meaning given in Paragraphs 7.2(a) to 7.2(c);
“Service Plan”	Continuity	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **"Business Continuity Plan"**);
 - (iii) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **"Insolvency Continuity Plan"**); and
- (b) unless otherwise required by the Buyer in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Buyer shall:

- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Buyer.

2.4 If the Buyer rejects the draft Service Continuity Plan:

- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Service Continuity Plan to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Buyer by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Buyer and (at the Buyer's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Buyer and any of its other Related Service Providers in each case as notified to the Supplier by the Buyer from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Buyer;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Buyer;
- (i) identify the procedures for reverting to “normal service”;

- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Buyer as notified by the Buyer from time to time to inform decisions in support of the Buyer's business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Buyer, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4 SERVICE CONTINUITY PLAN: PART B - BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Buyer expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - (a) the technical design and build specification of the Disaster Recovery System;
 - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;

- (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
 - (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - (f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Buyer supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - (c) plans to manage and mitigate identified risks;
 - (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
 - (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and

- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Buyer requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Buyer shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Buyer a report (a **"Review Report"**) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Buyer shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Buyer.

7.4 If the Buyer rejects the Review Report and/or the Supplier's Proposals:

- (a) the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Buyer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Buyer for the Buyer's approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Buyer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Buyer may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Buyer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Buyer requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer in this regard. Each test shall be carried out under the supervision of the Buyer or its nominee.

- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of “live” data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Buyer a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Buyer, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Buyer, by the date reasonably required by the Buyer and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Buyer.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Buyer promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Buyer.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

PART 2: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

- 10.1 This Contract is not a Critical Service Contract.
- 10.2 The Supplier shall notify the Buyer in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

- 11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part 2:
- (a) where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Buyer or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Buyer's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2:
- (a) is full, comprehensive, accurate and up to date;
 - (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Information
- and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Authorities to understand and consider the information for approval;

- (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
 - (e) complies with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.
- 11.4 Following receipt by the Relevant Buyer or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Buyer shall procure that the Relevant Buyer or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Buyer or Relevant Authorities approve the CRP Information or that Relevant Buyer or Relevant Authorities reject the CRP Information.
- 11.5 If the Relevant Buyer or Relevant Authorities reject the CRP Information:
- (a) the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Authorities for approval within 30 days of the date of the Relevant Buyer's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part 2 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:
- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.

11.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Buyer or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part 2) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress);
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Buyer (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part 2, the Supplier shall provide at the request of the Relevant Buyer or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Relevant Buyer or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (i) Aa3 or better from Moody's;
- (ii) AA- or better from Standard and Poors;
- (iii) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph

11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

- 11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Buyer or Relevant Authorities to the extent required under Paragraph 11.8.

12 Termination Rights

- 12.1 The Buyer shall be entitled to terminate this Contract under Clause 33.1(b) (Termination by the Buyer) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:
- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Buyer's or Relevant Authorities' request; or
 - (b) the Supplier fails to obtain an Assurance from the Relevant Buyer or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

13 Confidentiality and usage of CRP Information

- 13.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 13.2 Where the Relevant Buyer is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Buyer under paragraph 13.1 of this Part 2 and Clause 21.
- 13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Authorities pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Buyer or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- a) redacting only those parts of the information which are subject to such obligations of confidentiality
- b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - i) summarising the information;
 - ii) grouping the information;
 - iii) anonymising the information; and
 - iv) presenting the information in general terms

13.5 The Supplier shall provide the Relevant Buyer or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

APPENDIX I

Group Structure Information and Resolution Commentary

1. The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Buyer to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II and the dependencies between each.

APPENDIX II

UK Public Sector / CNI contract Information

1. The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Appendix II and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

SCHEDULE 8.7
CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
 - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Buyer and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

SCHEDULE 9.1

STAFF TRANSFER

NOT USED

ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS

Stated in Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form]

ANNEX 2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

1. *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
2. *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
3. *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life insurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Detail s	Annual leave entitlemen t (excluding bank holidays)	Bank holiday entitlemen t	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneratio n such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlemen t and pay	Sick leave entitlemen t and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Buyer.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Contract.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	OTHER							
Details	Security Level	Check	Security date	Clearance	Expiry	Additional comments	info	or
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

SCHEDULE 9.2

KEY PERSONNEL

Stated in Attachment 9.2 (Key Personnel) of the Order Form

SCHEDULE 10

GUARANTEE

NOT USED

SCHEDULE 11
PROCESSING PERSONAL DATA

JOINT CONTROLLER AGREEMENT

The following template terms shall apply in the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, pursuant to Clause 23.16.

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Joint Controller Agreement in replacement of Clause 23.2-23.15 (Where one Party is Controller and the other Party is Processor) and 23.17-23.27 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Buyer]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Buyer each undertake that they shall:

- (a) report to the other Party every [x] months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Agreement during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Contract or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Joint Controller Agreement.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their duties under this Joint Controller Agreement and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (i) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
 - (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
 - (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.
- 2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Joint Controller Agreement in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (i) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (ii) all reasonable assistance, including:
 - (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (b) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
 - (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (i) the nature of the Personal Data Breach;
- (ii) the nature of Personal Data affected;
- (iii) the categories and number of Data Subjects concerned;
- (iv) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (v) measures taken or proposed to be taken to address the Personal Data Breach; and
- (vi) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Joint Controller Agreement and the Data Protection Legislation.
- (b) the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 GDPR.

6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days'

notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

[Guidance Note: This paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- a) If in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- b) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident.
- c) If no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*).

7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):

- a) if the Buyer is responsible for the relevant breach, then the Buyer shall be responsible for the Claim Losses;
- b) if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and
- c) if responsibility is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in Paragraphs 7.2-7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Buyer.

8. Termination

If the Supplier is in material Default under any of its obligations under this Joint Control Agreement, the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 33 (*Termination Rights*).

9. Sub-Processing

9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

- (i) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (ii) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.