

Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1. Buyer	The Secretary of State for Justice acting as part of the Crown (the Buyer), whose offices are at 102 Petty France London SW1H 9AJ.
2. Supplier	Name: OneAdvanced Limited Address: The Mailbox, Level 3, 101 Wharfside Street, Birmingham, B1 1RF Registration number: 3214465
3. Contract	This contract between the Buyer and the Supplier is for the supply of Deliverables, being a screening and assessment tool for Lot 1 Maths, English and Digital Skills - see Schedule 2 (Specification) for full details. This opportunity was advertised on Contract Notice and on Find A Tender, reference 2024/S 000-023613 (FTS Contract Notice).
4. Contract reference	Con_24749
5. Buyer Cause	Any material breach of: • None indicated. And the Buyer shall have no obligation to perform any obligations placed on it in Schedule 2 (Specification) or Schedule 4 (Tender) unless they are specifically identified above.
6. Collaborative working principles	The Collaborative Working Principles apply to the Contract. See Clause 3.1.3 for further details.
7. Financial Transparency Objectives	The Financial Transparency Objectives apply to the Contract. See Clause 6.3 for further details.
8. Start Date	1 st June 2025 (being the date that the Implementation Services begin)

9.	Expiry Date	The date which is 4 calendar years from and including the 1st October 2025.
10.	Extension Period	Further period of up to a maximum of 3 calendar years from and including the Expiry Date (at the Buyer's discretion). The Buyer shall have the right to request the Extension Period by giving the Supplier not less than 30 days' notice.
11.	Ending the Contract without a reason	The Buyer may terminate the Contract in accordance with Clause 14.3.
12.	Incorporated Terms (together these documents form the " Contract ")	The following documents are incorporated into the Contract. Where numbers are missing the Schedules are not being used. If there is any conflict, the following order of precedence applies: (a) This Award Form (b) Core Terms (c) Schedule 35 (Intellectual Property Rights and Additional Terms on Digital Deliveries) (d) Schedule 1 (Definitions) (e) Schedule 6 (Transparency Reports) (f) Schedule 20 (Processing Data) (g) Schedule 16 (Security) (h) The following Schedules (in equal order of precedence): a. Schedule 2 (Specification) b. Schedule 3 (Charges) c. Schedule 5 (Commercially Sensitive Information) d. Schedule 7 (Staff Transfer) e. Schedule 8 (Implementation Plan & Testing) f. Schedule 10 (Service Levels) g. Schedule 11 (Continuous Improvement) h. Schedule 12 (Benchmarking) i. Schedule 13 (Contract Management and Governance) j. Schedule 14 (Business Continuity and Disaster Recovery)

		k. Schedule 18 (Supply Chain Visibility) l. Schedule 19 (Cyber Essentials Scheme) m. Schedule 21 (Variation Form) n. Schedule 22 (Insurance Requirements) o. Schedule 24 (Financial Difficulties) p. Schedule 25 (Rectification Plan) q. Schedule 26 (Sustainability) r. Schedule 27 (Key Subcontractors) s. Schedule 30 (Key Supplier Staff) t. Schedule 31 (Exit Management) u. Schedule 33 (Background Checks) (i) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.
13.	Special Terms	N/A
14.	Environmental Policy	https://www.oneadvanced.com/about-us/esg/ Report available to download within link.
15.	Social Value Commitment	The Supplier shall, in providing the Deliverables and performing its obligations under the Contract, deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports set out in Schedule 26 (Sustainability)
16.	Buyer's Security Requirements and Security and ICT Policy	Security Requirements: as set out in Schedule 16 (Security)
17.	Charges	Details in Schedule 3 (Charges)
18.	Estimated Charges	REDACTED Under Section 43 of the FOIA: Commercial Interests

19.	Payment method	The Supplier shall submit invoices to the Buyer in accordance with the Buyer's requirements set out in this section 19. 1 The Buyer issues purchase orders using Basware and, unless Approved otherwise, the Supplier shall, when invited, register on Basware. 2 If the Supplier registers on Basware, a valid invoice is an invoice issued through Basware, unless the invoice contains: (a) additional lines not included in the relevant purchase order; (b) line descriptions which have been materially altered so that they no longer match the equivalent description in the relevant purchase order; or (c) Charges and/or volumes which have been increased without Approval. 3 If, with Approval, the Supplier does not register on Basware, a valid invoice is an invoice which complies with the requirements below. 4 Other than invoices submitted through Basware, all invoices submitted to the Buyer must clearly state the word 'invoice' and contain: (a) a unique identification number (invoice number); (b) the Supplier's name, address and contact information; (c) the name and address of the department/agency in the Buyer with which the Supplier is working; (d) a clear description of the services being invoiced for; (e) the date the services were provided; (f) the date of the invoice; (g) the amount being charged; (h) VAT amount if applicable; (i) the total amount owed; (j) the purchase order number; and (k) the amount of the invoice in sterling or any other currency which is Approved. 5. Other than invoices submitted through Basware, all invoices submitted to the Buyer must meet the following criteria:
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		(a) email size must not exceed 4mb; (b) one invoice per file attachment (PDF). Multiple invoices can be attached as separate files; (c) any supporting information, backing data etc. must be contained within the invoice PDF file; (d) not contain any lines for items which are not on the purchase order; (e) replicate, as far as possible, the structure of and the information contained in the purchase order in respect of the number of lines, line descriptions, price and quantity; and (f) if required by the Buyer, be submitted in a structured electronic invoice in an Electronic Data Interchange or XML formats. 6. Other than invoices submitted through Basware, all invoices submitted to the Buyer must, if requested by the Buyer, include: (d) timesheets for Supplier Staff engaged in providing the Services signed and dated by the Buyer's representative on the Buyer Premises on the day; (e) the name of the individuals to whom the timesheet relates and hourly rates for each individual; (f) identification of which individuals are Supplier Staff and which are Sub-Contractors' staff; (g) the address of the Buyer Premises and the date on which work was undertaken; (h) the time spent working on the Buyer Premises by the individuals concerned; (i) details of the type of work undertaken by the individuals concerned; (j) details of plant or materials operated and on standby; (k) separate identification of time spent travelling and/or meal or rest breaks; and (l) if appropriate, details of journeys made and distances travelled.
20. Service Levels		Service Credits will accrue in accordance with Schedule 10 (Service Levels)

		A Critical Service Level Failure is: a failure below the “requires improvement” threshold set out in Schedule 10 (Service Levels)
21.	Liability & Data Protection Liability Cap	In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges. In accordance with Clause 15.6, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap, being £10 million.
22.	Cyber Essentials Certification	Cyber Essentials Scheme Plus Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)
23.	Progress Meetings and Progress Reports	The Supplier shall attend Progress Meetings with the Buyer every month. The Supplier shall provide the Buyer with Progress Reports every month.
24.	Virtual Library	In accordance with Paragraph 2.2. of Schedule 31 (Exit Management): - the period in which the Supplier must create and maintain the Virtual Library, is as set out in that Paragraph; and - the Supplier shall update the Virtual Library as set out in that Paragraph.
25.	Supplier's Contract Manager	REDACTED Under Section 40 of the FOIA: Personal Information.
26.	Supplier Authorised Representative	REDACTED Under Section 40 of the FOIA: Personal Information.
27.	Supplier Compliance Officer	REDACTED Under Section 40 of the FOIA: Personal Information.
28.	Supplier Data Protection Officer	REDACTED Under Section 40 of the FOIA: Personal Information.

29.	Supplier Marketing Contact	REDACTED Under Section 40 of the FOIA: Personal Information.
30.	Key Subcontractors	Key Subcontractor 1 <i>Not Applicable</i>
31.	Buyer Authorised Representative	REDACTED Under Section 40 of the FOIA: Personal Information.

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:	REDACTED Under Section 40 of the FOIA: Personal Information.	Signature:	REDACTED Under Section 40 of the FOIA: Personal Information.
Name:	REDACTED Under Section 40 of the FOIA: Personal Information.	Name:	REDACTED Under Section 40 of the FOIA: Personal Information.
Role:	REDACTED Under Section 40 of the FOIA: Personal Information.	Role:	REDACTED Under Section 40 of the FOIA: Personal Information.
Date:	30/05/2025	Date:	30/05/2025

Core Terms – Mid-tier

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1. Definitions used in the contract

Interpret the Contract using Schedule 1 (Definitions).

2. How the contract works

- 2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
 - 2.1.1 make changes to the Award Form;
 - 2.1.2 create new Schedules;
 - 2.1.3 exclude optional template Schedules; and
 - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 The Contract:
 - 2.2.1 is between the Supplier and the Buyer; and
 - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
 - 2.4.1 the Buyer's requirements for the Deliverables;
 - 2.4.2 the Buyer's operating processes and working methods; and
 - 2.4.3 the ownership and fitness for purpose of the Buyer Assets,and it has advised the Buyer in writing of:
 - 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
 - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
 - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,and such actions, timetable and costs are fully reflected in the Contract.
- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it did not either:
 - 2.5.1 verify the accuracy of the Due Diligence Information; and/or
 - 2.5.2 properly perform its own adequate checks.

- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables were and remain true and accurate.

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

- (a) that comply with the Specification, the Tender Response and the Contract;
- (b) using reasonable skill and care;
- (c) using Good Industry Practice;
- (d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
- (e) on the dates agreed; and
- (f) that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.

3.1.3 The Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:

- (a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- (d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and

- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

3.2 Goods clauses

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.3 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.5 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.6 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.7 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.8 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.9 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.10 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.11 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 3.2.12 The Buyer is not liable for any actions, claims and Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges,

costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

3.3 Services clauses

3.3.1 The Supplier shall provide:

- (a) The Implementation Services from (and including) the Implementation Services Commencement Date; and
- (b) The Operational Services in each case from (and including) the relevant Operational Services Commencement Date.

3.3.2 Late Delivery of the Services is a Default of the Contract.

3.3.3 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.

3.3.4 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.

3.3.5 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

3.3.6 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.7 On completion of the Services (or an element of the Services), the Supplier is responsible for leaving any of the relevant Buyer Premises in a clean, safe, secure and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear including managing the closure or termination of Services to take account of the Buyer's disposal requirements, including recycling and scope for re-use and all Applicable Standards.

3.3.8 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.9 The Buyer may withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

3.3.10 The Supplier shall:

- (a) Perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:

- (i) All applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Buyer's IT strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 3.3.10(a) (i) – (vi); and
- (b) indemnify the Buyer against any costs resulting from any breach by the Supplier of any applicable Law relating to the Contract; and
 - (c) deliver the Services and Deliverables using efficient business processes and ways of working having regard to the Buyer's obligation to ensure value for money.

3.3.11 The Supplier shall obtain and maintain throughout the duration of the Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services.

3.3.12 The Supplier shall ensure that:

- (a) it shall continue to have all necessary rights in and to the Licensed Software, Third Party IPRs, the Supplier Existing IPRs and any other materials made available by the Supplier or any Subcontractor to the Buyer which are necessary for the performance of the Supplier's obligations under the Contract and/or the receipt of the Services by the Buyer;
- (b) release of any new Software or upgrade to any Software complies with the interface requirements and comply with any security requirements including as set out in Schedule 16 and shall notify the Buyer 3 months before the release of any new Software or Upgrade. All Software, including upgrades, updates and new releases used by or on behalf of the Supplier must be currently supported versions of that Software and perform in all material respects in accordance with the Specification.

3.3.13 The Supplier must gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purpose of ascertaining the Supplier's (and any Subcontractors) compliance with its obligations under the Contract.

- 3.4 The Supplier shall comply with the Implementation Plan and ensure that each Milestone is Achieved on or before its Milestone Date. The Parties shall comply with the provisions of Schedule 8 (Implementation Plan and Testing) in relation to the agreement and maintenance of the Implementation Plan and in relation to the procedures to determine whether a Milestone or Test has been Achieved.
- 3.5 The Supplier shall provide the Operational Services in such a manner as to meet or exceed the Target Performance Level for each Service Level from the Milestone Date identified and comply with the provisions of Schedule 10 (Service Levels) in relation to the monitoring and reporting on its performance against the Service Levels.

4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier will invoice the Buyer for the Charges in accordance with the Award Form and as set out in Schedule 3 (Charges).
- 4.2 All Charges:
- 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the invoice or in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
- 4.4.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and
 - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestones (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under the Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.
- 4.8 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- 4.8.1 Any withholding of the Charges by the Buyer due to performance failures;
- 4.8.2 the existence of an unresolved dispute; and/or
- 4.8.3 any failure by the Buyer to pay any Charges (unless such failure entitles the Supplier to terminate the Contract under Clause 14.6.2)

5. The buyer's obligations to the supplier

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
 - 5.1.1 the Buyer cannot terminate the Contract under Clause 14.4.1;
 - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under the Contract;
 - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
 - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 only applies if the Supplier:
 - 5.2.1 gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;
 - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
 - 5.2.3 mitigated the impact of the Buyer Cause.

6. Record keeping and reporting

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer may Audit.
- 6.3 The Financial Transparency Objectives shall apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
 - 6.3.1 on or before the Effective Date;
 - 6.3.2 at the end of each Contract Year; and
 - 6.3.3 within 6 Months of the end of the Contract Period,
 - 6.3.4 and the Supplier must meet with the Buyer if requested within 10 Working Days of the Buyer receiving a Financial Report.

- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
 - 6.4.1 Supplier's currently incurred or forecast future Costs; and
 - 6.4.2 forecast Charges for the remainder of the Contract,
 - 6.4.3 then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5 The Buyer or an Auditor can Audit the Supplier.
- 6.6 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
 - 6.6.1 complies with the Supplier's operating procedures; and
 - 6.6.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7 During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
 - 6.7.1 all information within the permitted scope of the Audit;
 - 6.7.2 any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and
 - 6.7.3 the Supplier Staff.
- 6.8 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
 - 6.9.1 correcting any identified Default;
 - 6.9.2 rectifying any error identified in a Financial Report; and
 - 6.9.3 repaying any Charges that the Buyer has overpaid.
- 6.10 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
 - 6.10.1 tell the Buyer and give reasons;
 - 6.10.2 propose corrective action; and
 - 6.10.3 provide a deadline for completing the corrective action.
- 6.11 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 the Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

7. Supplier staff

- 7.1 The Supplier Staff involved in the performance of the Contract must:
 - 7.1.1 be appropriately trained and qualified;
 - 7.1.2 be vetted using Good Industry Practice, the Security Policy, Schedule 16 (Security) and, as applicable, Schedule 33 (Background Checks); and
 - 7.1.3 comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 7.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

8. Supply chain

8.1 Appointing Subcontractors

- 8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:
 - (a) manage Subcontractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under the Contract; and
 - (c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to the Contract to the Buyer or a Replacement Supplier.

8.2 Mandatory provisions in Sub-Contracts

- 8.2.1 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Contract:
 - (a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or

- (b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
 - (i) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
 - (ii) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice;
 - (iii) allow the Buyer to publish the details of the late payment or non-payment if this 30 day limit is exceeded; and
 - (iv) are no less onerous on the Subcontractor than those imposed on the Supplier under this Contract in respect of those provisions highlighted in Schedule 27 (Key Subcontractors).

8.3 When Sub-Contracts can be ended

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4 including a breach in relation to Personal Data;
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

8.4 Competitive terms

8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

8.4.2 If the Buyer uses Clause 8.4.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

8.5 Ongoing responsibility of the Supplier

The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

9. Rights and protection

9.1 The Supplier warrants and represents that:

- 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
- 9.1.2 the Contract is entered into by its authorised representative;
- 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
- 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;
- 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and for the Buyer to receive the Deliverables;
- 9.1.6 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
- 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and
- 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Effective Date or been subject to an investigation relating to a Prohibited Act.

9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

9.3 The Supplier indemnifies the Buyer against each of the following:

- 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff which affects the Contract; and
- 9.3.2 non-payment by the Supplier of any tax or National Insurance.

9.4 All claims indemnified under the Contract must use Clause 30.

9.5 The description of any provision of the Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.

- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

10. Intellectual Property Rights

- 10.1 The terms set out in Schedule 35 apply to the Contract.
- 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
 - 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
 - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate the Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 apply.

11. Rectifying issues

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
 - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
 - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
 - 11.3.1 will give reasonable grounds for its decision; and
 - 11.3.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

12. Escalating issues

12.1 If the Supplier does not:

12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and

12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meetings and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

12.2 The Escalation Meetings will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer may terminate the Contract and the consequences of termination set out in Clauses 14.5.1 apply as if the Contract was terminated under Clause 14.4.1.

13. Step-in rights

13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will take action in accordance with this Clause 13.1 and set out:

13.1.1 whether it will be taking action itself or with the assistance of a third party;

13.1.2 what Required Action the Buyer will take during the Step-In Process;

13.1.3 when the Required Action will begin and how long it will continue for;

13.1.4 whether the Buyer will require access to the Sites; and

13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.

13.2 For as long as the Required Action is taking place:

13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;

13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and

13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.

13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.

13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.

13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:

13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or

13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

14. Ending the contract

14.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.

14.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.

14.3 Ending the contract without a reason

The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it is terminated Clause 14.6.3 applies.

14.4 When the Buyer can end the contract

14.4.1 If any of the following events happen, the Buyer may immediately terminate the Contract by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

(a) there is a Supplier Insolvency Event;

(b) the Supplier does not notify the Buyer in writing of any Occasion of Tax Non-Compliance or does not provide details of proposed mitigating factors which, in the reasonable opinion of the Buyer, are acceptable;

- (c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request;
- (e) there's any Material Default of the Contract;
- (f) there's a Default of Clauses 2.8, 12, 31
- (g) the performance of the Supplier causes a Critical Service Level Failure to occur;
- (h) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- (i) there's a Change of Control of the Supplier which is not pre-approved by the Buyer in writing;
- (j) the Buyer discovers that the Supplier was in one of the situations in Reg.57 (1) or Reg.57(2) of the Regulations at the time the Contract was awarded;
- (k) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;
- (l) the Supplier does not comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables; or
- (m) the Supplier does not enter into or to comply with an Admission Agreement under Part D of Schedule 7 (Staff Transfer).

14.4.2 If any of the events in Reg.73 (1) (a) or (b) of the Regulations happen, the Buyer may immediately terminate the Contract and Clauses 14.5.1(b)) to 14.5.1(g)) apply.

14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates the Contract under Clauses 14.4.1, 10.4 and 12.3, Paragraph 7 of Part D of Schedule 7 (Staff Transfer), Paragraph 2.2 of Schedule 12 (Benchmarking) (where applicable) Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable) or Paragraphs 3.1.12.2 or 3.3.1.2 of Part A of Schedule 26 (Sustainability) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;

- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract.
- (f) the Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier); and
- (g) the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates the Contract under Clause 24.3:

- (a) each Party must cover its own Losses; and
- (b) Clauses 14.5.1(b)) to 14.5.1(g)) apply.

14.5.3 The following Clauses survive the termination or expiry of the Contract: 3.2.10, 4, 6, 7.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (Definitions), Schedule 3 (Charges), Schedule 7 (Staff Transfer), Schedule 31 (Exit Management), Schedule 35 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

14.6 When the Supplier (and the Buyer) can end the contract

14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer does not pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 40 Working Days of the date of the Reminder Notice (save where such failure to pay is due to the Buyer exercising its rights in relation to Force Majeure Event or where the invoice is not valid).

14.6.2 The Supplier may terminate the Contract in accordance with Clauses 24.3.

14.6.3 Where the Buyer terminates the Contract under Clause 14.3 or the Supplier terminates the Contract under Clause 14.6.1:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and

(c) Clauses 14.5.1(b)) to 14.5.1(g)) apply.

14.7 Partially ending and suspending the contract

14.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.

14.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of the Contract can still be used to effectively deliver the intended purpose.

14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

(a) reject the Variation; or

(b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

15. How much you can be held responsible for?

15.1 Each Party's total aggregate liability in each Contract Year (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and/or

15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3 In spite of Clause 15.1, neither Party limits or excludes:

15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and

15.3.3 any liability that cannot be excluded or limited by Law.

15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, 9.3.2, 10.2, 35.3.2 or Schedule 7 (Staff Transfer).

15.5 In spite of Clause 15.1, the Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (Staff Transfer).

- 15.6 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 15.8 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
 - 15.8.1 Deductions; and
 - 15.8.2 any items specified in Clause 15.4.
- 15.9 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:
 - 16.2.1 the Official Secrets Acts 1911 to 1989; and
 - 16.2.2 section 182 of the Finance Act 1989.
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with the Contract.
- 16.4 The Supplier must appoint a Compliance Officer who is responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

17. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22.

18. Data protection and security

- 18.1 The Supplier must comply with Schedule 16 (*Security*). The Supplier shall not store, copy, disclose or use Government Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer. To the extent that Government Data is held and/or processed by the Supplier, the Supplier shall supply that Government Data to the Buyer as requested by the Buyer and in the format specified in Schedule 2 (Specification) or as otherwise requested by the Buyer. The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).

- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier shall preserve the integrity of Government Data and prevent the corruption or loss of Government Data at all times that the relevant Government Data is under its control or the control of any Subcontractor. The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via a secure encrypted method upon reasonable request and in accordance with the provisions of Schedule 14 (Business Continuity and Disaster Recovery).
- 18.4 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with Schedule 19 (Cyber Essentials), Schedule 16 (Security), the Security Policy and the security requirements specified in the Award Form and otherwise as required by Data Protection Legislation.
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable (or is suspected to be so), the Supplier shall notify the Buyer immediately and inform the Buyer of the remedial action the Supplier proposes to take. Further, the Buyer may either or both:
 - 18.6.1 tell the Supplier to restore or get restored Government Data in accordance with Schedule 14 (Business Continuity and Disaster Recovery) as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
 - 18.6.2 restore the Government Data itself or using a third party and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent it is in accordance Schedule 14 (Business Continuity and Disaster Recovery).
- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is at fault.
- 18.8 The Supplier:
 - 18.8.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within 10 Working Days of a written request;
 - 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good

Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;

18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and

18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. What you must keep confidential

19.1 Each Party must:

19.1.1 keep all Confidential Information it receives confidential and secure;

19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and

19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;

19.2.3 if the information was given to it by a third party without obligation of confidentiality;

19.2.4 if the information was in the public domain at the time of the disclosure;

19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;

19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;

- 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
- 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in the Contract by the persons to whom disclosure has been made.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
 - 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - 19.4.2 on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 19.4.4 where requested by Parliament;
 - 19.4.5 under Clauses 4.6 and 20; and
 - 19.4.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 and Schedule 30 (if used).
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6 Transparency Information and any information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise the Contract or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

20. When you can share information

- 20.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

- 20.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 20.2.1 publish the Transparency Information; and
 - 20.2.2 comply with any Request for Information.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

21. Invalid parts of the contract

If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

22. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

23. Other people's rights in this Contract

- 23.1 The provisions of Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3 and 3.1 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (Staff Transfer) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 31 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("**CRTPA**").
- 23.2 Subject to Clause 23.1, no third parties may use the CRTPA to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.
- 23.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 23.4 Any amendments or modifications to the Contract may be made, and any rights created under Clause 23.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

24. Circumstances beyond your control

- 24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
 - 24.1.1 provides a Force Majeure Notice to the other Party; and
 - 24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

25. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

26. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

27. Transferring responsibilities

- 27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.
- 27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot subcontract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
 - 27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

- 27.2.3 the proposed Subcontractor employs unfit persons.
- 27.3 The Buyer can assign, novate or transfer the Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 27.5 .
- 27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
 - 27.7.1 their name;
 - 27.7.2 the scope of their appointment;
 - 27.7.3 the duration of their appointment; and
 - 27.7.4 a copy of the Sub-Contract.

28. Changing the contract

- 28.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.
- 28.2 The Supplier must provide an Impact Assessment either:
 - 28.2.1 with the Variation Form, where the Supplier requests the Variation; and
 - 28.2.2 within the time limits included in a Variation Form requested by the Buyer.
- 28.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:
 - 28.3.1 agree that the Contract continues without the Variation; and
 - 28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).
- 28.4 The Buyer is not required to accept a Variation request made by the Supplier.
- 28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
 - 28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or

28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.

28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.

28.7 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical and must say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:

28.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and

28.7.2 of how it has affected the Supplier's costs.

28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

29. How to communicate about the contract

29.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.

29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.

29.3 This Clause 29 does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

30. Dealing with claims

30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

30.2 At the Indemnifier's cost the Beneficiary must both:

30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

30.2.2 give the Indemnifier reasonable assistance with the claim if requested.

30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
 - 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
 - 30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

31. Preventing fraud, bribery and corruption

- 31.1 The Supplier must not during the Contract Period:
 - 31.1.1 commit a Prohibited Act or any other criminal offence listed in Regulations 57(1) and 57(2);
 - 31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 31.2 The Supplier must during the Contract Period:
 - 31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - 31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
 - 31.2.3 if required by the Buyer, within 20 Working Days of the Effective Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 31.3 The Supplier must immediately notify the Buyer if it becomes aware of any Default of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
 - 31.3.1 been investigated or prosecuted for an alleged Prohibited Act;

- 31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 31.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Contract; and
 - 31.3.4 suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.
- 31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:
 - 31.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
 - 31.5.2 immediately terminate the Contract in accordance with Clause 14.4.1 and the consequences of termination in Clause 14.5.1 apply.
- 31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:
 - 31.6.1 Prohibited Act;
 - 31.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
 - 31.6.3 action it has decided to take.

32. Equality, diversity and human rights

- 32.1 The Supplier must follow all applicable equality Law when it performs its obligations under the Contract, including:
 - 32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

33. Health and safety

- 33.1 The Supplier must perform its obligations meeting the requirements of:
 - 33.1.1 all applicable Law regarding health and safety; and
 - 33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 33.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

34. Environment

- 34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

35. Tax

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 35.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:
 - 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
 - 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:
 - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
 - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

35.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

35.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and

35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

36. Conflict of interest

36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.

36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 14.5.1(b) to 14.5.1(g) shall apply.

37. Reporting a breach of the contract

37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected:

37.1.1 breach of Law;

37.1.2 Default of Clause 16.1; and

37.1.3 Default of Clauses 31 to 36.

- 37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 37.1 to the Buyer or a Prescribed Person.

38. Further Assurances

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of the Contract.

39. Resolving disputes

- 39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.
- 39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.
- 39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the courts of England and Wales have the exclusive jurisdiction to:
- 39.3.1 determine the Dispute;
 - 39.3.2 grant interim remedies; and
 - 39.3.3 grant any other provisional or protective relief.
- 39.4 The Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 39.5 The Buyer may refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.
- 39.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

40. Which law applies

The Contract and any issues or Disputes arising out of, or connected to it, are governed by English law and the courts of England and Wales shall have

exclusive jurisdiction to settle any dispute or claim that arises out of in connection with the Contract or its subject matter of formation.

Schedule 1 (Definitions)

1. Definitions

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
 - 1.3.1 reference to a gender includes the other gender and the neuter;
 - 1.3.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
 - 1.3.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.6 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
 - 1.3.7 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.8 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;

- 1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
- 1.3.10 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole; and
- 1.3.11 any reference in the Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.
- 1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:
- | | |
|--------------------------------------|---|
| "Achieve" | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " Achieved ", " Achieving " and " Achievement " is construed accordingly; |
| "Additional FDE Group Member" | any entity specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties); |
| "Affected Party" | the Party seeking to claim relief in respect of a Force Majeure Event; |
| "Affiliate(s)" | 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; |
| "Allowable Assumptions" | the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges); |
| "Annex" | extra information which supports a Schedule; |
| "Annual" | each calendar year; |
| "Annual Charge" | (a) in the Contract Year commencing from and including the Services Commencement Date, the Base Annual Charge; and
(b) in subsequent Contract Years, the Annual |

Charge as calculated in accordance with Schedule 3 (Charges), Paragraph 5 (Indexation);

"Approval" the prior written consent of the Buyer and **"Approve"** and **"Approved"** are construed accordingly;

"Associates" in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

"Audit" the Buyer's right to:

- (a) verify the integrity and content of any Financial Report;
- (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract);
- (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
- (d) verify the Open Book Data;
- (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
- (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer has no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
- (h) 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) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;
	(j) 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) 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;
"Auditor"	(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;
"Award Form"	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;
"Base Annual Charge"	The amount of [x] ¹ ;
"Baseline Security Requirements"	the security requirements set out in Schedule 16 (Security);
"Basware"	Basware eMarketplace, the procurement software used by the Buyer for its financial transactions;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under the Contract;

¹ To be extracted from the FRT and the Bidder's Tender submission (Option A or Option B, as appropriate)

"Breach Security"	of	an occurrence of: (a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Government Data (including Confidential Information) and/or the Services in connection with the Contract; (b) the loss (physical or otherwise), corruption and/or unauthorised disclosure of any information, Information Assets and/or data (including Confidential Information and the Government Data) including copies of such information or data, used by the Buyer and/or Supplier in connection with the Contract; and/or (c) any part of the Supplier System ceasing to be compliant with the Baseline Security Requirements.
"Buyer"		the public sector purchaser identified as such in the Award Form;
"Buyer Asset(s)"		the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the Contract Period;
"Buyer Authorised Representative"		the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
"Buyer Cause"		has the meaning given to it in the Award Form;
"Buyer Content"		means any and all Data (including any Personal Data relating to any staff, contractors, Related Third Parties ,Sub-contractors or other suppliers of the Buyer) supplied to the Supplier by or on behalf of the Buyer which the Supplier shall generate, process, store, transmit or otherwise deal with in accordance with its obligations under this Contract.
"Buyer Existing IPR"		means the Buyer Materials, the Buyer infrastructure and any and all IPR that are owned by or licensed to the Buyer (including any other IPR in Government Data or Buyer Assets), and where the Buyer is a Crown Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Effective Date or

		otherwise) and which are or may be used in connection with the provision or receipt of the Services;
"Buyer Member"	Group	means representatives of the Buyer who will attend the Governance Groups identified in the Annes (Governance Group Details) of Schedule 13 (Contract Management and Governance).
"Buyer's System"	ICT	means the Buyer's ICT system which is owned or used by the Buyer and will be used in connection with the provision of the Deliverables and/or Services, and will consist of the: (a) digital Wi-Fi network; (b) end-user devices including monitor, keyboard, mouse and system box (desktop or laptops) as determined as appropriate by the Buyer; (c) operating system and standard software; (d) peripherals including multi-functional devices; and (e) Buyer Software, including, but not limited to Curious, Learning Management System, data collection systems, Labour Market Intelligence Tool, screening and assessment tools, Prison-NOMIS, the library management system, Digital Prison Services, OASys and/or any other software packages the Buyer makes available to the Supplier to enable delivery of the Services or associated reporting requirements.
"Buyer Premises"		premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
"Buyer Property"		the property, other than real property and IPR, including the Buyer System, any equipment issued

		or made available to the Supplier by the Buyer in connection with the Contract;
"Buyer Software"		any software which is owned by or licensed to the Buyer or any Buyer Group Member and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"		the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with the Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services and/or Deliverables. The current Buyer Systems that are subject to change either prior to or after the start of the Contract are Digital Prison Service (internal HMPPS system), Analytical Platform (The HUB- internal HMPPS system) and Curious (Externally commissioned data collection system);
"Buyer Party"	Third	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
"Buyer's Confidential Information"		(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR); (b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and information derived from any of the above;
"Change in Law"		any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Effective Date;
"Change Control"	of	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
"CIAG Provider"	means any supplier of services to the Buyer in relation to Careers, Information, Advice and Guidance ("CIAG").
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under the Contract;
"Collaborative Working Principles"	The collaboration principles identified in clause 3.1.3 of the Core Terms, together with the obligation to: a) enable and encourage partnership working between the Supplier, Core Education Providers and the Authority at the local and national level; b) co-develop a shared vision S&A, with focus on achieving the best outcomes for Prisoners, including driving higher quality standards and the best value for money; c) collectively identify ways to support each other to overcome common issues, jointly develop solutions, drive continuous improvement, and learn from best practice, recognising each other's abilities and limitations; and d) develop openness and trust in a transparent "no surprises" information and data sharing environment.
"Commercially Sensitive Information"	the Confidential Information listed in Schedule 5 (Commercially Sensitive Information (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply"		the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Confidential Information"		means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPR, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;
"Conflict Interest"	of	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
"Contract"		the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"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;
"Contract Period"		the term of the Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, until the End Date;
"Contract Value"		the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
"Contract Year"		a consecutive period of 12 Months commencing on the Effective Date or each anniversary thereof;
"Control"		control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " Controlled " is construed accordingly;
"Controller"		has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

"Core Education Provider(s)"	any supplier of core education services for educational or related services as part of PES, including S&A.
"Core Education Services"	the services to be provided by the Core Education Provider including the Curriculum for Independence (English (including reading provision) and mathematics, digital skills, English for speakers of other languages ("ESOL"), life skills), flexible curriculum implementation, peer mentors, Curriculum for Opportunity (key vocational subject areas, self-employment support, distance learning, further and higher education support) Accredited provision and awarding bodies, Prison library services with a focus on digital eLearning content, digital delivery models and data collection and management.
"Core Terms"	the Buyer's terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms" ;
"Costs"	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: (i) base salary paid to the Supplier Staff; (ii) employer's National Insurance contributions; (iii) 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 provide the Deliverables (but not including items included within (b) below); and

- (ix) reasonable recruitment costs, as agreed with the Buyer;
- (b) costs incurred in respect of Supplier Assets 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 Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- (c) operational costs which are not included in (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and
- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:

- (a) Overhead;
- (b) financing or similar costs;
- (c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) taxation;
- (e) fines and penalties;
- (f) amounts payable under Schedule 12 (Benchmarking) if used; and
- (g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"COTS Software" or "Commercial off the shelf Software"

non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;

"Critical Service Level Failure"

has the meaning given to it in the Award Form;

"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown IPR"	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
"Data Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;

"Default"	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
"Defect"	any of the following: (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under the Contract; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under the Contract;
"Delay Payments"	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Deliverable(s)"	Goods, Services or software that may be ordered and/or developed under the Contract including the Documentation;
"Delivery"	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b)

	where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" is construed accordingly;
"Department for Education"	the government department which is responsible for children's services and education, including early years, schools, higher and further education policy, apprenticeships and wider skills in England
"Dependent Parent Undertaking"	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into the Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of the Contract;
"Digital Deliverables"	the Deliverables which the Supplier shall provide to the Authority in accordance with this Contract which are provided or supported digitally.
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster.
"Disaster Recovery System"	the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster.
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19;
"Disclosure and Barring Service ("DBS")"	a non-departmental public body which processes and issues DBS checks for England, Wales, the Channel Islands and the Isle of Man;

"Dispute"	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 39;
"Documentation"	descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as: (a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables (b) is required by the Supplier in order to provide the Deliverables; and/or (c) has been or shall be generated for the purpose of providing the Deliverables;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
"DPA"	the Data Protection Act 2018 as amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc.)

	(EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);
"DPA 2018"	the Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
"Effective Date"	the date on which the final Party has signed the Contract;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"Emergency Maintenance"	ad hoc and unplanned maintenance to be provided by the Supplier where either Party reasonably suspects that the Supplier System or the Services, or any part of the Supplier System or the Services, has or may have developed a fault.
"End Date"	the earlier of: (a) the Expiry Date as extended by the Buyer under Clause 14.2; or (b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
"End User"	means a party that is accessing the Deliverables provided pursuant to the Contract (including the Buyer where it is accessing services on its own account as a user);
"Environmental Policy"	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	means a meeting between the Supplier Authorised Representative and the Buyer Authorised

	Representative to address issues that have arisen during the Rectification Plan Process;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	means for the purposes of calculating each Party's annual liability under Clause 15.1: (a) in the first Contract Year, the Estimated Year 1 Charges; or (b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or (c) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 31 (Exit Management);
"Expiry Date"	the date of the end of the Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	the occurrence of one or more the following events: (a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;

- (b) any FDE Group entity issues a profits warning to a stock exchange or makes 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 any FDE Group entity;
- (d) any FDE Group entity commits a material breach of covenant to its lenders;
- (e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
 - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as a profit warning or ability to trade as a going concern;

- (ii) commencement of any litigation against any 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;
- (iii) non-payment by any FDE Group entity of any financial indebtedness;
- (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
- (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or
- (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or

- (j) any of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 (Financial Difficulties) for any of the FDE Group entities failing to meet the required Financial Target Threshold;

"Financial Report"

a report provided by the Supplier to the Buyer that:

- (a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
- (c) is 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 the Contract; and
	(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;
"Financial Response Template"	the financial response template included within Schedule 3 (Charges);
"Financial Transparency Objectives"	means: (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier; (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques; (c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges; (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services; (e) the Parties challenging each other with ideas for efficiency and improvements; (f) enable the buyer to have complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify (including the provision of Open Book Data) the costs incurred or savings made by the Supplier and the Charges, including assumptions made; and (g) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;
"Financial Viability Risk Assessment"	an assessment of the financial standing of the Supplier as may be conducted by the Buyer from time to time at their discretion (with the Supplier's co-operation);

"FOIA"		the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Event"	Majeure	any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from: (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under the Contract; (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; (c) acts of a Crown Body, local government or regulatory bodies; (d) fire, flood or any disaster; or (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and (iii) any failure of delay caused by a lack of funds, and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;
"Force Notice"	Majeure	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"General Anti-Abuse Rule"	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to the Contract;
"Good Industry Practice"	at any time the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Data"	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer Content or the Buyer's Confidential Information, and which: (i) are supplied to the Supplier by or on behalf of the Buyer; and/or (ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or (b) any Personal Data for which the Buyer is Controller.

"Government Procurement Card"	the Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 ;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	His Majesty's Revenue and Customs;
"HMPPS"	HM Prison and Probation Service;
"ICT Environment"	the Buyer System and the Supplier System;
"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"ICT Services"	means the Services provided by the Supplier in accordance with the Contract to the extent that these relate to the Digital Deliverables and are delivered digitally.
"Impact Assessment"	an assessment of the impact of a Variation request by the Buyer completed in good faith, including: (a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract; (b) details of the cost of implementing the proposed Variation; (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party; (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and

	(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
"Implementation Period"	has the meaning given to it in Paragraph 7.1 of Schedule 8 (Implementation Plan and Testing);
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Implementation Services"	the Services that are to be provided by the Supplier to implement the Supplier's solution as described in the Implementation Plan;
"Implementation Services Commencement Date"	the date on which the Supplier is to commence provision of the Implementation Services, being 1 st April 2025;
"Incorporated Terms"	the contractual terms applicable to the Contract specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under the Contract;
"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Indexation"	the adjustment of an amount or sum in accordance with the Contract;
"Information Assets"	definable pieces of information stored in any manner which are determined by the Buyer to be valuable and relevant to the Services;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Information Security and Management Plan" or "ISMP"	the information security and management plan prepared by the Supplier in accordance with Schedule 16 (Security);
"Information Security Policy Framework"	the Policy Framework published on 29 January 2020 (and subsequently updated from time to time) relating to information assurance as amended from

time to time and available at:
<https://www.gov.uk/government/publications/information-security-policy-framework>.

"ISMS"

the information security management system and process developed or operated by the Contractor in accordance with the Baseline Security Requirements and Schedule 16 (Security).

"Initial Period"

the initial term of the Contract specified in the Award Form;

"Insolvency Event"

with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is

levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;

- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Installation Works"

all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract;

"IPR"	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 35 is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
"IR35"	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/ir35-find-out-if-it-applies ;
"Joint Control"	where 2 or more Controllers jointly determine the purposes and means of Processing;
"Joint Controllers"	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
"Key Roles"	the key roles listed at Annex 1 of Schedule 30 (Key Supplier Staff);
"Key Staff"	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 30 (Key Supplier Staff);

"Key Contract"	Sub- each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	any Subcontractor: (a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or (b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or (c) with a Sub-Contract with a value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract, and the Supplier shall list all such Key Subcontractors in the Award Form;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Effective Date;
"KPI(s)" or "Key Performance Indicator(s)"	the key performance indicators set out in Annex A to Part A (Service Levels and Service Credits Table) of Schedule 10 (Service Levels);
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Law Enforcement Processing"	processing under Part 3 of the DPA 2018;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer in connection with the provision of the Services and Deliverables for the purposes of or

	pursuant to this Contract, including any COTS Software.
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" is interpreted accordingly;
"Lot(s)"	the group of S&A requirements grouped together by the Buyer for the purposes of delivery of S&A.
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Management Information"	management information including but not limited to the Performance Monitoring Reports, Financial Reports and Transparency Reports to be provided by the Supplier to the Buyer;
"Material Default"	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)
"Marketing Contact"	is the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	the payment(s) as set out in the Implementation Plan, to be paid in accordance with Paragraph 4 of Schedule 3 (Charges);
"Modern Slavery Helpline"	means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on

	08000 121 700 or online at: https://www.modernslaveryhelpline.org/report .
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"Monthly Contract Price"	Shall have the meaning given in paragraph 2 of Schedule 3 (Charges);
"Monthly Delivery Fee"	Shall have the meaning given in paragraph 2 of Schedule 3 (Charges);
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"National Regime Model"	The National Regime Model, currently being implemented, has created a new national structure for regime design and delivery which will improve the regime experience and outcomes for prisoners.
"New IPR"	(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or (b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;
"New IPR Item"	means a deliverable, document, product or other item within which New IPR subsists;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Non-trivial Customer Base"	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

"Notifiable Default"	means: (a) the Supplier commits a Material Default; and/or (b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;
"Object Code"	Software and/or data in machine-readable compiled object code form;
"Occasion of Tax Non Compliance"	where: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;
"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 Contract, including details and all assumptions relating to: (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including

- capital replacement costs) and the unit cost and total actual costs of all Deliverables;
- (b) operating expenditure relating to the provision of the Deliverables including an analysis showing:
 - (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
 - (iii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iv) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
 - (v) Reimbursable Expenses, if allowed under the Award Form;
 - (c) Overheads;
 - (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
 - (e) the Supplier Profit achieved over the Contract Period 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 Deliverables, including the amount of money attributed to each risk and/or contingency; and
 - (h) the actual Costs profile for each Service Period;

"Open Licence"

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	Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles , and includes the Open Source publication of Software;
"Open Source"	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Open Licence Publication Material"	means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
"Operating Environment"	the Buyer System and any premises (including the Authority Premises, the Contractor's premises or third party premises) from, to or at which: (a) the Deliverables are (or are to be) provided; or (b) the Buyer manages, organises or otherwise directs the provision or the use of the Deliverables; or (c) where any part of the Buyer System is situated.
"Operational Services"	The operational services to be provided as described in the Specification;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor'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 Staff and accordingly included within limb (a) of the definition of "Costs";
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;

"Personal Data"		has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"		has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Prisoner Education Service" or "PES"	or	means the Prisoner Education Service, more particularly, the provision of core education, library and careers information advice and guidance services.
"Prescribed Person"		a legal adviser, a Member of Parliament or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Prison(s)"		all public prisons in England (including any administration and other facilities used by the Prison in addition the buildings where Prisoners are housed) subject to the addition or removal of Prisons and PMPs from the scope of the Services by the Authority from time to time in accordance with the Variation Procedure.
"Prisoner"		means any remand prisoner or offender being housed at or resident at a Prison.
"Prison Staff"		staff and employees employed at the Prisons or HMPPS.
"Privately Managed Prison(s)" or "PMP(s)"	or	Prison(s) managed by a third party as opposed to the Buyer.
"Processing" or "Process"	or	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor"		has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor Personnel"		all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;

"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Prohibited Act(s)"	(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Protective Measures"	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the

	effectiveness of the such measures adopted by it including those outlined in Schedule 16 (Security);
"PSI 07/2014"	Prison Service Instruction published 2 nd June 2014 relating to security vetting as amended from time to time and available at: Security vetting: PSI 07/2014, PI 03/2014 - GOV.UK (www.gov.uk)
"PSI 10/2012"	Prison Service Instruction published 26 th March 2012 relating to the conveyance and possession of of prohibited items and other related offences as amended from time to time and available at: Controlling banned (prohibited) items: PSI 10/2012 - GOV.UK (www.gov.uk)
"Public Sector Body "	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
"Quality Plans"	quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it.
"Quarter"	means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement), and "Quarterly" shall be interpreted accordingly;
"Quarterly Performance Payment" or QPP	shall have the meaning given in paragraph 4 of Schedule 3 (Charges);
"Recall"	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
"Recipient Party"	the Party which receives or obtains directly or indirectly Confidential Information;
"Rectification Plan"	the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:

		(a) full details of the Notifiable Default that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the Notifiable Default; and (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
"Rectification Plan Process"		the process set out in Clause 11;
"Regulations"		the Public Contracts Regulations 2015;
"Reimbursable Expenses"		the 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 Staff 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 Staff 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;
"Related Supplier(s)"		any person who provides services to the Buyer which are related to the Services from time to time, including the Core Education Contractors and the CIAG Contractors;
"Related Parties"	Third	means any third parties that the Buyer and/or the Supplier shall be required to liaise with from time to time in the provision of the Services including any Government or statutory agency, HMPPS (including its public and PMP Prisons and the probation provider), police authorities & Services, each a "Related Third Party";

"Relevant Requirements"		all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued pursuant to section 9 of the Bribery Act 2010;
"Relevant Authority"	Tax	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"		a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"		any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"		any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, also includes the Buyer;
"Request For Information"	For	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Action"		means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
"Required Insurances"		the insurances as set out in the Annex to Schedule 22 (Insurance Requirements) and any other insurances that might be required by applicable Law;
"S&A"		means the screening and assessment tools delivery which comprises part of the Services, as more particularly described in Schedule 2 (Specification).
"Satisfaction Certificate"		the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not

	used in the Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
"Searching Policy Framework"	the policy framework setting out the requirements and guidance for prisons and staff on searching of the person, cells, areas and vehicles as amended from time to time and available at: Searching Policy Framework - GOV.UK (www.gov.uk)
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form, in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Tests"	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Services Commencement Date"	In relation to the Operational Services, the later of: a) the date agreed by the Buyer in the Implementation Plan from which the Operational Services are to commence; b) 1st October 2025; and c) Where the Implementation Plan states that the Supplier must have achieved a relevant Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier achieves that Milestone.
"Service Credits"	any service credits or QPP deductions specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or

	more Service Levels which are calculated in accordance with the formula identified in Schedule 3 (Charges);
"Service Levels"	any service levels or Key Performance Indicators applicable to the provision of the Deliverables (which, where Schedule 10 (Service Levels) is used in the Contract, are specified in the Annex to Part A of such Schedule);
"Service Month"	each Month (or part of a Month at the start and end of the Contract Period where applicable) during the Contract Period when the Supplier provides Services (with the first Service Month of the Contract Period commencing from and including the Services Commencement Date);
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to the Contract;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: (a) the Deliverables are (or are to be) provided; or (b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; (c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Social Value"	the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability);

"Social KPIs"	Value	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability);
"Social Report"	Value	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability);
"Software"		any software including Specially Written Software, COTS Software and software that is not COTS Software;
"Software Supporting Materials"		has the meaning given to it in Schedule 35 (Intellectual Property Rights and Additional Terms on Digital Deliverables);
"Source Code"		computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Special Terms"		any additional terms and conditions set out in the Award Form incorporated into the Contract;
"Specially Written Software"		any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of the Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Specific Change in Law"		a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;
"Specification"		the specification set out in Schedule 2;
"Standards"		any:

	(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, ; (b) standards detailed in the specification in Schedule 2; (c) standards agreed between the Parties from time to time; (d) relevant Government codes of practice and guidance applicable from time to time.;
"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13;
"Step-In Trigger Event"	means: (a) the Supplier's level of performance constituting a Critical Service Level Failure; (b) the Supplier committing a Material Default which is irremediable; (c) where a right of termination is expressly reserved in the Contract; (d) an Insolvency Event occurring in respect of the Supplier or any Guarantor; (e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them; (f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under the Contract; (g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary; (h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or

	(i) a need by the Buyer to take action to discharge a statutory duty;
"Step-Out Plan"	means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process;
"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party: (a) provides the Deliverables (or any part of them); (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in the Contract;
"Supplier COTS Existing IPRs"	any embodiments of Supplier Existing IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or

licence) on standard terms which are not typically negotiated by the Supplier save as to price; and

(b) has a Non-trivial Customer Base

"Supplier Non-COTS Existing IPR"	any embodiments of Supplier Existing IPRs that have been delivered by the Supplier to the Buyer and that are not Supplier COTS Existing IPRs;
"Supplier Non-COTS Software"	means Supplier Software that is not COTS Software;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under the Contract;
"Supplier Existing IPR(s)"	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
"Supplier Existing IPR Licence"	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 35 (Intellectual Property and Additional Terms on Digital Deliverables);
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings, each being a "Supplier Group Member";
"Supplier New and Existing IPR Licence"	a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 35 (Intellectual Property Rights and Additional Digital Deliverables);
"Supplier Non-Performance"	where the Supplier has failed to: (a) Achieve a Milestone by its Milestone Date; (b) provide the Goods and/or Services in accordance with the Service Levels; and/or (c) comply with an obligation under the Contract;
"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in

	nominal cash flow terms) in respect of the Contract for the relevant period;
"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;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
"Supplier's Confidential Information"	(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier; (b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract; (c) information derived from any of (a) and (b) above;
"Supplier's Contract Manager"	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);

"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
"Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4;
"Termination Assistance"	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 31 (Exit Management);
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of Schedule 31 (Exit Management);
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
"Test Plan"	a plan: (a) for the Testing of the Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and "Tested" is construed accordingly;
"Third Party COTS IPR(s)"	Third Party IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not

typically negotiated by the Supplier save as to price; and

(b) has a Non-trivial Customer Base.

"Third Party COTS Software"	Third Party COTS Software Third Party Software (including Open Source Software) that: Means Third Party COTS Software Third Party Software (including Open Source Software) that: (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
"Third Party IPR(s)"	IPR owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software;
"Third Party Non-COTS Existing IPR"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Software"	software which is proprietary to any third party (other than an Affiliate of the Supplier or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 35 (Intellectual Property Rights and Additional Terms on Digital Deliverables);
"Transforming Delivery Directorate"	The Transforming Delivery Directorate is a directorate within HMPSS that aims to drive transformation in Prisons and Probation through people, technology and operating models and help drive outcomes for all.
"Transparency Information"	the Transparency Reports and the content of the Contract, including any changes to the Contract agreed from time to time, except for –

	(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"UK GDPR"	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
"Valid Invoice"	means an invoice containing the information set out in Clause 4.4 of the Core Terms;
"Variation"	a variation to the Contract;
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 28;
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
"Welsh Language Scheme"	the Buyer's Welsh language scheme as amended from time to time and available at: MOJ Welsh Language Scheme 2018 - GOV.UK (www.gov.uk)
"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 Staff properly working on the provision of the Deliverables including time spent travelling (other than to and

from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

"Worker"

any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the Deliverables; and

"Working Day"

any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

"Youth Custody Service"

a specialist service within HM Prison & Probation Service focussing on the care and rehabilitation of children and young people aged 10 to 18 in custody.



Ministry of
JUSTICE

Contract for the Provision of the Screening & Assessment Tool for Maths, English & Digital Skills

I

SCHEDULE 2 – SPECIFICATION

Contract for the Provision of the Screening & Assessment Tool for Maths, English & Digital Skills

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Contract for the Provision of Screening & Assessment (S&A) Tools**1 DEFINITIONS**

In this Schedule 2, the defined terms shall be as set out in Schedule 1 (*Definitions*) unless otherwise stated.

2 INTRODUCTION

2.1 This Schedule sets out the Specification for the Services.

2.2 Bidders to be aware that there are three Lots (as set out at 2.2 a) - c)). Each Lot requires the provision of a S&A Tool (referred to as the “Tool” or together, the “Tools”). This provision includes the development, configuration, maintenance, of the Tool as well as training on how to use the Tool. Each Lot requires a separate Tool, unless noted otherwise, the requirements below are for all Tools. The Lots are as set out below:

- a) Functional Skills – Mathematics, English, Digital Skills (“**Lot 1**”);
- b) Reading (“**Lot 2**”);
- c) Additional Learning Needs Indicator Tool (“**Lot 3**”).

2.3 This Schedule will apply to the individual Lot(s) that a successful bidder has been appointed to.

3 GENERAL

3.1 This procurement is for the provision of S&A Tools for all eligible Prisoners in the subject areas as listed at paragraph 2.2 above. This Contract relates to Lot 1 Maths, English & Digital Skills.

3.2 The intended outcome is for effective, high-quality, accessible and evidence-based Tools for each of the above Lots, which are compliant with the Buyer information security standards and can produce accurate results around a Prisoners’ educational ability level or Additional Learning Needs (ALN) (as applicable to the relevant Lot).

4 SERVICE ELEMENTS IN SCOPE FOR ALL LOTS

- 4.1 The provision of a Prison-appropriate S&A Tool, henceforth referred to as 'the Tool'.
- 4.2 The Tool must be evidenced based and supported by research. The Tool must be at least part digitised. The Buyer recognises that the Tool may need further work within the mobilisation period (being the period which is 6 Months from and including the Effective Date ("the Mobilisation Period")) in order to be adapted for the Prison environment and may need further work to digitise to the full extent required. Notwithstanding this, the Tool must meet the MVP requirements (as set out at paragraph 8.1 of this Schedule 2) from and including the Effective Date.
- 4.3 The Supplier must ensure that the Tool is ready for roll out across all in scope Prisons (as at the expiry date of the Mobilisation Period) in accordance with the Implementation Plan.
- 4.4 The Tool will be used by all eligible Prisoners across 104 adult Prisons in England within the relevant Lot. Privately Managed Prisons and new/additional Prisons may become in scope at a later date.
- 4.5 Bidders should ensure they understand the eligibility requirements as detailed in Appendix 1 of this Schedule.
- 4.6 The Services must include the provision of:
- a) support and assistance to the Buyer in order to complete any required data migration from the Supplier's System to the Buyer's ICT System, as may be requested by the Buyer at any time;
 - b) ongoing and comprehensive guidance, training and technical support to staff members who deliver and manage the Tool; and
 - c) consistent reporting functionality in accordance with the KPIs and other performance obligations set out in the Contract.
- 4.7 The Tool must comply with Buyer information security standards and data regulatory governance as detailed within the Contract.

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- 4.8 The Tool must produce accurate results, which are capable of informing educational and ALN support, and planning (as applicable).
- 4.9 The Supplier may occasionally be required to enter Buyer Premises including Prisons at no additional cost to the Buyer, for example to support in training or to attend meetings.
- 4.10 The Tool will be facilitated by Core Education Providers on site in Prisons, the Tool must be suitable for delivery on a one-to-one basis, and in small groups (up to a maximum of 10 Prisoners).
- 4.11 Further information on the delivery of Screening and Assessment Tools is included in the contract for Core Education Services, detailed in Appendix 1 of this Schedule.
- 4.12 It is the Buyer's expectation that all assessment content will be provided by the bidder, in a digital format as applicable to the Lot. Where materials are required in paper format the Buyer expects the bidder to propose the most cost-effective solution for facilitating access to these resources.

5 SERVICE ELEMENTS OUT OF SCOPE FOR ALL LOTS

- 5.1 The Supplier will be responsible only for their Tool (the Lot(s) the Supplier bids for), they will not be responsible for other Tools included in this procurement.
- 5.2 The following are out of scope of this Contract:
 - a) Careers Information, Advice and Guidance ("CIAG");
 - a) the provision of an integrated cClinical environment system;
 - b) Any non-educational curriculum screenings within the Prison. Including, but not limited to: healthcare, industries, life skills, psychology, probation, offender management unit and employability screening or assessment;
 - c) Prisons in Wales and the Youth Custody Service;
 - d) Curriculum course-specific diagnostic screeners required after a Prisoner has signed up to an educational course; and

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- e) The delivery of the S&A Tool is out of scope of this procurement. Facilitation of the S&A tools will be the responsibility of the Core Education Providers and will be delivered by Core Education Providers and not the Supplier of the S&A Tool.

6 OPERATIONAL REQUIREMENTS

- 6.1 The Tool must be age and functionality appropriate, including being designed and suitable for adult individuals aged 18 or over, for use in a Prison setting.
- 6.2 It is anticipated that a Tool will take approximately 30 minutes to complete on a one-to-one basis or in small groups (maximum 10 people).
- 6.3 The Tool must be capable of being administered by and understood by a range of non-specialists.
- 6.4 Tool outputs must be made available digitally live after completion to recipients designated by the Buyer (at the Buyer's discretion), including, Core Education Contractors, wider Prison Staff (as appropriate), Prisoner(s) (as appropriate), selected third parties and the Buyer.
- 6.5 The Tool shall be made available pursuant to paragraph 6.4 through whitelisting the necessary URLs within the Buyer's ICT System (as required) provided that the Supplier complies with the security standards, requirements and policies required by the Buyer in accordance with the Contract and this Schedule 2 (Specification).
- 6.6 Tool data must be made available to recipients designated by the Buyer in line with any pre-agreed regular data submissions.
- 6.7 The Tool must be evidence based, have been standardised and have been quality assured to ensure it identifies Prisoner ability levels/ indicates potential area(s) of learning needs (as appropriate) and is of a consistent quality. The Tool outputs must be understood by the Prisoner and Prison Staff and must be capable of analysis to identify trends and patterns.
- 6.8 The Tool must be gender neutral and free from bias.
- 6.9 The Tool provided will support any standards set by the Buyer, Ofsted, and His Majesty's Inspectorate of Prisons ("HMIP"). The Supplier shall make sure that it

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has a system in place for monitoring the quality and effectiveness of its service provision.

- 6.10 The Tool Supplier will work with key stakeholders identified by the Buyer to ensure that information from S&A that is deemed relevant on release from Prison can be shared in line with the Buyer Information Sharing Guidance (see Live Links document in the Data Room on Jaggaer).
- 6.11 The Tool Supplier will work with the Buyer and HMPPS digital strategy and delivery teams to ensure continual compatibility with online systems, hardware and software.
- 6.12 The Tool must be reviewed and updated as necessary (as a minimum on an annual basis) to ensure that the quality and content of the Tool is up-to-date and reflects leading industry standards, as well as governmental priorities, ministerial direction and curriculum amendments.
- 6.13 The security requirements must be reviewed and updated on an annual basis, or more frequently, if necessary, as agreed with the Buyer.
- 6.14 The Supplier must engage with governance processes and provide timely and accurate Management Information, and data reporting to the Buyer in line with agreed timescales as detailed in Schedule 13 and after contract award.
- 6.15 The Supplier must be able to provide Tool support in line with business requirements, constraints and needs.
- 6.16 The Supplier must supply and facilitate training on the effective use of the Tool, this training can vary in format but must meet the needs of all attendees.

7 DATA RECORDING, PROTECTION AND PRIVACY

- 7.1 In addition, Supplier must ensure that:
 - a) Data generated by the Tool must be handled in compliance with GDPR (General Data Protection Regulation) as provided through the 2018 Data Protection Act: [Data protection: The Data Protection Act - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/legislation/the-data-protection-act-2018) as amended from time to time;

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- b) There is a documented process for ensuring and recording informed consent which is available in accessible formats and supported with explanatory guidance and administration standards.
- c) The Tool has a privacy notice which is subject to regular review and updated where necessary.
- d) Data hosting used in the delivery of the Services must be based in the UK and compliant with Data Protection Legislation.
- e) The data gathered by and stored through the Tool must be compliant with Data Protection Legislation.
- f) To ensure data protection and privacy, any data used for test and development networks utilised must be anonymised. Data sanitisation type must be explicit overwriting of storage before reallocation (where applicable).
- g) To ensure data protection and privacy, data sanitisation should be carried out in line with the National Cyber Security Centre (NCSC) best practice relevant to the sensitivity of the data being sanitised (see Live Links document in the Data Room on Jaggaer). Where appropriate and depending on the sensitivity of the data, the Buyer may also request cryptographic erasure or other methods as agreed with the Buyer. In all cases, any sanitisation should be documented and reported through the Buyer.

8 DIGITAL REQUIREMENTS FOR ALL LOTS: CRITICAL

8.1 From and including the Effective Date, the Supplier will ensure that the following minimum viable product (“MVP”) criteria is met:

- a) The Tool must be accessed, completed, and produce outputs outlined in the Lot specific requirements in paragraphs 12 - 14 as applicable to the Lot, in a digital format with an offline contingency option in place should the primary (web-based) access route not be available.
- b) Data from the Tool, including user completion, outcome results and recommended next steps must be accessible to the Buyer. The Buyer owns this data and retains the right to publish the data to other Buyer systems.
- c) High-level design documents must be provided that demonstrate how the Tool works and how web-based solutions meet security requirements.

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- 8.2 Where a proposed Tool will not be fully digitised by the Effective Date the Supplier will be expected to demonstrate how and when the proposed Tool will be web-based both in part and in whole through a detailed Implementation Plan including timescales for paras 8.3 - 8.5 below. The Supplier must be aware that such Implementation Plan(s) will form part of the Contract and the Supplier will be responsible for ensuring that delivery is successful and in accordance with any timescales detailed therein.
- 8.3 The Supplier must provide low-level design documents to the Buyer within the first 2 Months of the Mobilisation Period, including but not limited to, a mobilisation plan (“the Mobilisation Plan”) for the Buyer’s Approval.
- 8.4 The Tools are expected to be compliant with [Government Digital Standard](#) (“GDS”) in the design, testing and deployment, in time for the Service Commencement date or have a commitment to work towards it as detailed in an Implementation Plan.
- 8.5 The Tools are expected to meet Technology Code of Practice (“TCoP”) standards in time for the Service Commencement date or have a commitment to work towards them as detailed in an Implementation Plan, including the accessibility requirements as noted in the [TCoP](#) and Government guidance on [accessibility requirements](#).

9 TECHNICAL STANDARDS

- 9.1 Security standards are set out in Schedule 16 (Security). In addition, the technical and security standards that the Supplier must meet at or before contract signature are:

Requirement	Detail
IT Health Check	Completed at CHECK level annually or sooner where there is a material change to the system.
ISO27001 accreditation	ISO27001 accreditation or a ISO27000 accreditation if the Supplier commits to having ISO27001 complete part 1 within 6 Months of Service

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	Commencement and part 2 within 12 Months of the Effective Date.
Cyber Essentials Plus	
ISO9001 principles	ISO9001 or a commitment to work towards it.
Comply with principles of ISO/IEC 27034	
Conform to NCSE CPA Build Standard (see supporting documents)	
Comply with principles of ISO/IEC 27034	
Security governance certification	
ITIL Change process (See supporting documents)	
Federal Information Processing Standard (FIPS) assured encryption IPS 140-2 & 140-3 Validated Cryptographic Modules.	The FIPS 140 standards specify the cryptographic and operational requirements for modules within security systems that protect sensitive information.
TLS (version 1.3 or above)	Data protection measures between Buyer and Supplier networks, and data protection within the Supplier network must operate at this level
CSA CCM v3.0 or equivalent	Configuration and change management must abide by this standard.



Vulnerability management type conforms to a recognised standard, for example CSA CCM v3.0 or SSAE-16 / ISAE 3402.	The Supplier must employ independent security consultants and work closely with supply chain partners to assess potential threats and implement mitigation measures including emergency patch deployment where advised to do so (where applicable).
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9.2 Additionally, the Supplier must ensure that their Tool:

- a) is capable of sharing data using open standards and integration with other services as detailed in Section 11 of Volume 1 (Overview of the Procurement Process & Prisoner Education Services Delivery Landscape;
- b) can be run on and is compatible with multiple browsers including Microsoft Edge browser (which should be the main and/or preferred browser for the Tool), see our Service Manual;
- c) offers industry standard user identification and authentication; and
- d) uses a Software as a Service (“SaaS”) model or appropriately licensed alternative which is capable of sharing data and integration with other services as detailed in Section 11 of Volume 1 (Overview of the Procurement Process & Prisoner Education Services Delivery Landscape.

10 DIGITAL REQUIREMENTS: DESIRED (NOT ESSENTIAL ON THE EFFECTIVE DATE & SHOULD BE DEVELOPED DURING THE CONTRACT).

10.1 The Supplier is required to supply a compatibility mechanism for service components to communicate with other services such as Application Programme Interfaces (“APIs”). All data shared with the Buyer digitally will be required to be published via a secure API using open standards.

10.2 The Tool must be:

- a) interoperable with the Buyer’s own systems for the lifetime of the Contract.
- b) the Tool should be usable offline when the internet fails and then synchronised to the online solution when the internet is restored.

- c) have the ability to import and export bulk data.
- d) be capable of operating without recourse to browser plug ins or extensions.

11 FUTURE DEVELOPMENT

- 11.1 HMPPS National Regime Model has launched in all Prisons and forms part of the Transforming Delivery Directorate. The Supplier is required to accommodate any reasonable service amendments to align with the National Regime Model and collaborate with other Suppliers to identify what might be required.
- 11.2 The HMPPS Digital Strategy is also under development and will significantly impact on the delivery and data management of the screening and assessment process. The Supplier will be required to evolve Tool provision in-line with agreed strategic developments and change control processes.

12 LOT 1 (MATHEMATICS, ENGLISH, DIGITAL SKILLS) SPECIFIC REQUIREMENTS

- 12.1 The mathematics and english element of the Tool must accurately assess Prisoner's current skills and ability under the following outcomes:
 - a) Pre-entry level;
 - b) Entry level 1;
 - c) Entry level 2;
 - d) Entry level 3;
 - e) Level 1; and
 - f) Level 2 or higher
- 12.2 The digital skills element of the Tool must accurately assess Prisoners' current skills and abilities in line with National Standards published by the Department for Education (see Live Links document in the Data Room on Jaggaer) and must provide an assessment of the Prisoner's everyday digital literacy skills and functional digital skills.

13 LOT 2 (READING) SPECIFIC REQUIREMENTS

- 13.1 The Tool must accurately identify gaps in a Prisoners' reading ability covering comprehension, reading fluency and phonological awareness and must indicate a reading level/score and level of reading support required to progress their ability to read.
- 13.2 Reading assessments can be partly digital but must include interaction with and assessment outcomes determined by screening and assessment delivery staff so that consideration can be made of reading accuracy, word pronunciation, expressions of tone or intonation.

14 LOT 3 (ADDITIONAL LEARNING NEEDS INDICATOR TOOL) SPECIFIC REQUIREMENTS

- 14.1 The ALN Tool must identify areas of potential additional learning need including:
- a) communication and interaction needs;
 - b) cognition and learning needs;
 - c) social, emotional and mental health difficulties; and
 - d) physical and/or sensory needs
- 14.2 Additionally, the Tool must:
- a) identify strengths, contributing to the process of making reasonable adjustments.
 - b) produce results that can inform and support processes of ALN support planning within a whole Prison approach including Prison inductions, education, and the wider Prison regime.
 - c) have been designed as an ALN indicator tool and not as a diagnostic tool (being a tool designed to be administered and interpreted by suitably qualified psychology, learning disability, nursing or specialist education staff in order to reach a clear professional diagnosis).
 - d) have been designed and developed with psychological and specialist educational input to ensure it covers a wide range of neurodivergent and other additional need(s).

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- e) have been previously tested within a relevant further education and/or custodial environment comparable to the Prison system in England and be supported by research/reports which clearly demonstrate its validity and capability to deliver in a consistent and equitable manner. Suppliers are expected to engage with the Buyer in any additional validity testing requested.

14.3 The Tool must also lead to the production of clear and detailed results and reports which:

- a) can be understood by the Prisoner, Prison Staff and HMPPS staff.
- b) clarify what the indicators of ALN are for the individual, including any areas of strength as well as areas of need.
- c) clearly identify what practical strategies and reasonable adjustments can be put in place to support the individual both within education and more widely within the Prison regime and in community healthcare.

14.4 It is desirable for the Tool to suggest where further specialist assessment may be needed by suitably qualified psychology, learning disability, nursing or specialist education staff.

It is desirable for the Tool to be available in multiple languages.

APPENDIX 1 – CORE EDUCATION PROCUREMENT S&A DELIVERY SPECIFICATION

Note: The following Specification and KPIs relate to the Core Education Procurement, responsible for the delivery of Screening and Assessment.

1. SCREENING AND ASSESSMENT DELIVERY

1. Screening and Assessment Delivery - Purpose

- a. The Screening and Assessment process accurately establishes Prisoners' baseline ability level across several educational disciplines upon entry to Prison, as well as indicating any areas of ALN for which they may require support.
- b. The results from this process inform the next steps of a Prisoner's Education, Skills, and Work Pathway, including activity allocations, learning plans, referrals, and Education Support Plans.

2. Screening and Assessment Delivery - Outcome

- a. The PES Core Education Provider will ensure that an initial educational screening and assessment process is conducted in Prisons for all eligible Prisoners (as set out in the operational requirements subsection of this Screening and Assessment Delivery Paragraph 11.2 of Part 2 of this Schedule 2) and any other Prisoners as eligible as notified by the Authority. The process must be:
 - i. Delivered by personnel who can administer the screening and assessment Tools in a way that is engaging, promotes the benefits of education, is inclusive and supportive to Prisoners and accurately establishes Prisoners' baseline ability levels.
 - ii. Completed digitally via the Authority's ICT System, with offline contingency arrangements in place which will still allow for assessments to be held in the required timescales and for results to be uploaded onto the Authority's ICT System when possible.
- b. The PES Core Education Provider must ensure the screening and assessment process is scheduled and completed within thirty (30) days from the Eligibility Date in accordance with Schedule 14 (*Key Performance Indicators*). Assessment sessions must be planned to maximize efficiency of the process and accuracy of results whilst considering Prisoner's individual needs and the local Prison regime.

3. Screening and Assessment Delivery - Service Elements in Scope

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a. The PES Core Education Provider will be responsible for the following services in relation to the delivery of screening and assessment services:

i. The use of the screening and assessment Tools within the Authority's ICT System to screen and assess all eligible Prisoners covering the following areas:

A. Functional Skills Assessment -

1. Mathematics
2. English
3. Digital Skills

B. English to Speakers of Other Languages (ESOL) Assessment (***Out of scope for this Procurement***)

C. Reading Assessment

D. Additional Learning Needs Indicator

b. The PES Core Education Provider is required to ensure that the information regarding identification of need and support provided in education is saved in the appropriate place(s) within the Authority's ICT System.

c. The PES Core Education Provider must ensure assessment results are accurately recorded on the Authority's ICT Systems.

d. The PES Core Education Provider must review screening and assessment results to signpost and refer Prisoners to the most appropriate ALN support.

e. The PES Core Education Provider must make appropriate next step functional skills course recommendation in line with functional skills Tool result.

4. **Screening and Assessment Delivery - Operational Requirements**

a. To deliver effective screening and assessment services, the PES Core Education Provider must ensure that Authority-provided Functional Skills, ESOL, and reading assessments and ALN screenings are delivered to capture Prisoner educational ability in Mathematics, English, ESOL, Digital Skills, literacy, and ALN to all eligible Prisoners. The Authority provided Tools will not require specialist or teaching qualified Staff to operate and will be able to be facilitated with basic training.

b. Prisoner Eligibility is defined as:

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i. Additional Learning Needs:

- A. All Prisoners without a previous record on the Authority's ICT Systems of completing the PES additional needs indicator Tool.
- B. Prisoners for whom it has been agreed by the Governor of a Prison (responsibility can be delegated by the Governor but this can be no lower than a Band 6 member of Prison staff) that repeat ALN screening is appropriate. The Contractor must ensure that any screening that is repeated is collaboratively agreed with healthcare teams and OMU- based Prison staff input and the reasons for repeating the assessment are evidenced and documented.

ii. Functional Skills:

- A. All Prisoners who do not have any record on the Authority's ICT Systems of previous assessment results or educational attainment and there is no evidence recorded on learner record systems ("**LRS**") or provided by the Prisoner of prior attainment of a GCSE grade 4 equivalent in English, mathematics, and Digital Skills.
- B. Prisoners for whom it has been agreed by the Governor of a Prison (responsibility can be delegated by the Governor but this can be no lower than a Band 6 member of Prison staff) that repeat Functional Skills assessment is appropriate due to either a significant change in circumstances since the previous assessment (such as acquired brain injury) or evidence of educational attainment being unavailable. The Contractor must ensure that reasons for repeating the assessment are evidenced and documented.

iii. Reading:

- A. Any Prisoner who states on the Basic Custody Screening Tool ("**BCST**") that they cannot read.
- B. Any Prisoner who scores Pre-Entry, E1 or E2 on the English Functional Skill assessment.
- C. Any Prisoner who has potential reading difficulties identified via the ALN indicator Tool.

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D. Any Prisoner without an existing educational record who has been referred for a reading assessment by any member of Prison staff. Where a non-educational staff member refers a Prisoner, the referral must be assessed by Staff before a reading assessment is undertaken.

E. Any Prisoner who chooses to self-refer for a reading assessment where there are no other indicators of functional reading ability on record (English level E3 and above for example). Where a Prisoner self refers but there is an indication of ability to read, the referral must be assessed by Staff before a reading assessment is undertaken.

iv.ESOL (out of scope for this Procurement):

A. Any Prisoner that has had self-declared an English language need.

B. Any Prisoner that or has had an English language need identified via BCST or education introduction.

C. Any Prisoner that has been referred for an ESOL assessment by any member of Prison staff.

c. In delivery of Screening and Assessment services, the PES Core Education Provider will need to comply with Screening & Assessment KPI 6 (parts a and b), in accordance with Schedule 14 (*Key Performance Indicators*)

d. The PES Core Education Provider must review assessment results to recommend the most appropriate adjustments and support for any identified needs and next step functional skills courses for Prisoners.

e. The PES Core Education Provider must ensure all recommendations are in line with results from the functional skills and ALN indicator Tools and are recorded on the Authority's ICT Systems and made accessible to the Prisoner, CIAG and local allocations teams.

f. The PES Core Education Provider must ensure that the purpose of each assessment is clearly explained to the Prisoner before delivery, this must include outcomes from the assessments, information on the wider context of Prison education, the benefits of engaging with education and an overview of the educational courses available in the Prison.

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- g. The PES Core Education Provider must obtain informed consent from the Prisoner before commencement of each assessment they are eligible for. Informed consent must be recorded on Authority digital systems.
- h. The PES Core Education Provider must ensure that all screenings are completed digitally through the Authority's ICT System, with offline contingency arrangements in place should this not be possible. Contingency arrangements must include provision for screenings that are delivered offline to be recorded and uploaded onto the Authority's ICT Systems, and where necessary shared with appropriate Authority and Staff within and external to the Prison, as required.
- i. The PES Core Education Provider must ensure that positive behaviours which encourage engagement with education are applied to all interactions with Prisoners.
- j. The PES Core Education Provider must schedule all screening and assessment activity with consideration to the Prisoner Journey Process Map and with allowance for individual differences between Prison regimes. The sequencing of Prisoner settlement activity includes initial Prison risk assessments, healthcare screenings, Prison inductions and key worker meetings. This is then followed by the educational screening and assessment procedure covering Functional Skills, Reading, ESOL and ALN, which leads into the CIAG process, activity allocation and/or educational course enrolment.
- k. Education Providers must work collaboratively with CIAG staff to ensure that assessments are scheduled to take place before the initial careers' guidance session.
- l. The PES Core Education Provider must ensure that all required screening and assessments for Prisoners must be completed by the end of the site-specific induction period for each Prison and before the Prisoner is moved from the induction wing. If a prisoners individual circumstances prevent screening and assessment from being completed within the site-specific induction period, then the Contractor must ensure that screening and assessment is scheduled for within thirty (30) days from the Eligibility Date unless there are clear and valid reasons to delay the process beyond thirty (30) days.
- m. Prior to any screening offered, Staff will need to check for previous educational records via the Authority's ICT System and the LRS to confirm if any previous screenings have taken place and to review prior academic attainment to ensure that screening is only offered to Prisoners who meet the eligibility criteria.
- n. Prior to screening being administered, the Staff shall ask, and record details of languages spoken and preferred language and offer ESOL screening Tool where appropriate.

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- o. The PES Core Education Provider must provide the opportunity to all Prisoners to self- declare whether they have a learning need, disability or a medical condition which will affect their learning and:
 - i. Make reasonable endeavours to seek out further information if appropriate,
 - ii. Clearly differentiate screening Tool results, areas of need, self- declared diagnosis and confirmed diagnoses when recording information,
 - iii. Make reasonable endeavours to confirm any declared diagnosis with relevant Healthcare services or external bodies such as previous education Contractors or the Local Authority where relevant. This must be evidenced and recorded digitally on the Authority's ICT System. Until evidence of a diagnosis is obtained this need must be clearly reported as 'self-declared'.
- p. The PES Core Education Provider must ensure that prior to enrolment on a course, Prisoners are asked whether they were enrolled in education prior to imprisonment or if they have an Education, Health, and Care Plan (**EHCP**). If either of these are the case, the Contractor is required to get consent from the Prisoner to contact previous education Contractor and/or LA to request information on support needs.
- q. The PES Core Education Provider must ensure that delivery arrangements and the learning environment are designed with suitable adaptations to support those with a range of learning needs, neurodiversity needs, Learning Difficulties and/or Learning Disabilities.
- r. The PES Core Education Provider must record and provide assessment, enrolment, and progression data on request from the Authority, aligning to regular reporting practices and information sharing agreements as set out in Schedule 24 (*Collaboration*). Contractors will ensure that information regarding support required to participate in education, skills and work on release is recorded digitally and is clearly outlined on the Authority's ICT System in line with requirements set out in the Services and Mandatory Guidelines.
- s. The PES Core Education Provider must ensure that in instances where a Prisoner refuses to engage with screening and assessment this is recorded on the Authority's ICT System. A review date must be agreed and as a minimum they must attempt to re-engage the Prisoner every three (3) Months, and evidence of all further attempts made to effectively engage the Prisoner must also be recorded.
- t. The PES Core Education Provider must engage actively with inspection of the Services by Ofsted, whether as part of inspections by HMIP (His Majesty's Inspectorate of Prisons) or otherwise, documenting any shortcomings in agreed detailed action plans with targets to address them.

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- u. The PES Core Education Provider must work with key stakeholders to ensure that legally compliant information sharing arrangements and agreements are in place for the purposes of sharing information from screening and assessment that is relevant to settlement, further referrals, and transfer and/or release. All sharing of information must be done in compliance with Authority information sharing guidance and practices. Any information from screening and assessment that is relevant to settlement, transfer and/or release is shared in line with Authority information sharing guidance and practices.
- v. The PES Core Education Provider must work with Prison staff, including the Learning and Skills Manager, Neurodiversity Support Manager and Heads of Education, Skills and Work, health, and other education or support staff, to support sharing of information. This includes the provision of monthly (or at a greater frequency as agreed with the Prison) additional needs indicator Tool screening registers and proactively ensuring that all Prison staff and Staff, who are responsible for meeting the Prisoners' needs within the wider Prison environment, are made aware of any identified need or support.
- w. Location and environment of delivery
 - i. Service delivery will be on site in Prisons, and it will be Prisoner- facing requiring interaction with Prisoners. Screening delivery may be on a 1 to 1 basis, or in small groups (up to a maximum of 10 Prisoners) as determined in conjunction with the Prison to best meet Prisoner needs while not exceeding the Learner Delivery Hours set out in the ADP. It is anticipated that the new digital screening and assessment Tool will take 2 hours to complete screening and assessments for each small group, however the Contractor will need to always be able to provide screening and assessment and have appropriate contingencies in place for circumstances that prevent the usual method of delivery.
 - ii. The learning environment needs to meet the requirements outlined in the 'learning environment' section of this specification.



Schedule 3 (Charges)

1 Charges

- 1.1 The Charges shall be the only payment payable by the Buyer in respect of the Services. The Charges are payable in accordance with this Schedule 3 and the Financial Response Template.
- 1.2 Subject to Paragraph 1.3, in a Service Month the Supplier will be entitled to be paid the following:
- 1.2.1 the Monthly Contract Price payable in respect of that Service Month (in accordance with Paragraph 2); plus
 - 1.2.2 on a Quarterly basis, following completion of the calculation of the Quarterly Performance Payment, the Quarterly Performance Payment for the preceding Quarter which has become due and payable under Paragraph 3 ("**Quarterly Performance Payment**").
- 1.3 The Parties acknowledge and agree that the Charges payable by the Buyer in a Contract Year are capped at the amounts stated in this Schedule 3 (the "**Cap**") and as set out in the Financial Response Template, subject only to the indexation provisions in Paragraph 5. The Buyer shall not be obliged to pay any Charges in a Contract Year for provision of the Services in excess of the Cap, other than as expressly provided for in this Contract or as may be agreed in writing by the Parties through the Variation Procedure and based on the rates set out in the Financial Response Template.

2 Monthly Contract Price

- 2.1 The Charges for a relevant Contract Year will be divided into 12 equal Monthly amounts (the "**Monthly Delivery Fee**").
- 2.2 The Monthly Contract Price is 90% of the Monthly Delivery Fee. The remaining 10% will be put into the pot for the Quarterly Performance Payment.
- 2.3 The Monthly Contract Price will be calculated as follows:

$$MCP = MDF - 10\%$$

MCP = Monthly Contract Price

MDF = Monthly Delivery Fee



3 Calculation of Quarterly Performance Payment

- 3.1 The Quarterly Performance Payment (QPP) is made up of 3 x (MDF-10%). This is the equivalent of the Total Delivery Fee for a relevant Contract Year being divided into 4 equal amounts (the "**Quarterly Baseline Payment**").
- 3.2 The Maximum Quarterly Performance Payment ("**MQPP**") is then the equivalent of 10% of the Quarterly Baseline Payment.
- 3.3 Performance against a KPI which falls short of the Service Level Performance Measure will be liable to a reduction in the Quarterly Performance Payment ("**QPP**").
- 3.4 The following reductions in QPP will be applied:
- 3.4.1 Minor Performance Shortfalls will carry a reduction of 33% of the proportion of QPP allocated to that KPI and will be levied throughout the period that the Performance Shortfall persists.
 - 3.4.2 Medium Performance Shortfalls will carry a reduction of 66% of the proportion of QPP allocated to that KPI and will be levied throughout the period that the Performance Shortfall persists.
 - 3.4.3 Major Performance Shortfalls will carry a reduction of 100% of the proportion of QPP allocated to that KPI and will be levied throughout the period that the Performance Shortfall persists.
- 3.5 The reduction in QPP for a particular level of Performance Shortfall will be calculated as follows:

$$QPP = MQPP \times KPI\% \times P\%$$

QPP = Quarterly Performance Payment

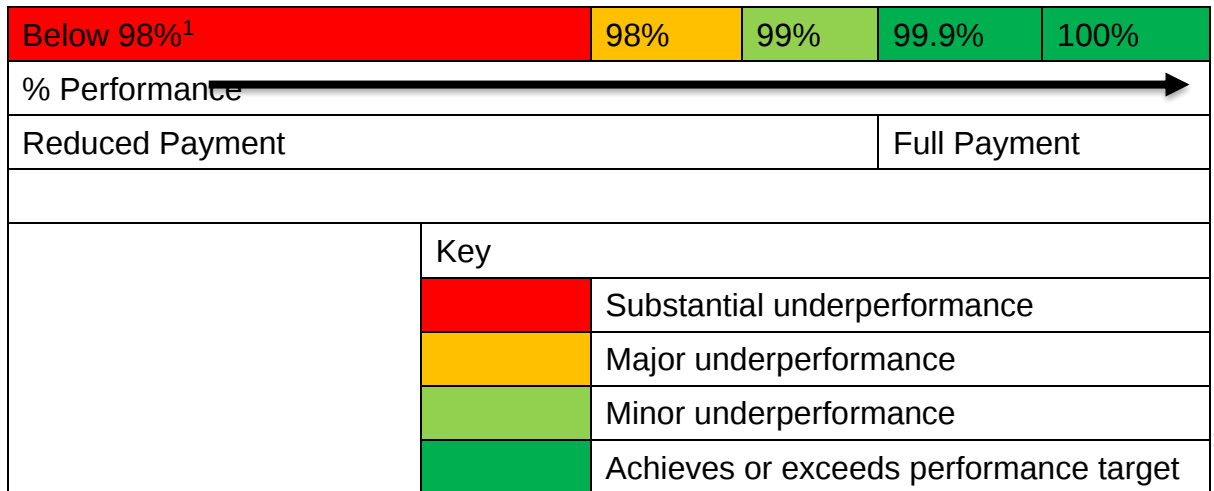
MQPP = Maximum Quarterly Performance Payment

KPI% = Percentage of weighting for the KPI, where the failure occurred

P% = The performance percentage (either 33%, 66% or 100% depending on the level of performance)

3.6 Worked Example:

	Available but not all standards achieved	Achieved Target	Over Achieving
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3.6.1 The diagram shows that:

- If the Supplier's performance was 99.9% or above, the Supplier would receive 100% of the QPP.
- If the Supplier's performance was between 99% and 99.8% it would lead to a Minor Performance Shortfall and the Supplier would only receive 67% of the QPP
- If the Supplier's performance was between 98% and 99.9% it would lead to a Medium Performance Shortfall and the Supplier would only receive 33% of the QPP
- If the Supplier's performance was below 98% it would lead to a Major Performance Shortfall and the Supplier would not receive any QPP.

3.6.2 Scenario:

The KPI requires priority calls to be responded to within their set timeframe. The KPI target is 99.9%, and the Supplier achieves a Minor Performance Shortfall in Q2 of the 2026/2027 financial year.

Total Delivery Fee	£450,000
Maximum Performance Payment (for the financial year)	£45,000
Maximum Quarterly Performance Payment Q2	£11,250
KPI weighting	20%
MQPP allocated to KPI	£2,250

¹ Please note the percentages are illustrative actual bands will vary according to the KPI and targets set in Schedule 10 (Service Levels).



Minor Performance Shortfall (Reduction in MQPP) 33%

QPP for the KPI £1507.20

4 Milestones

- 4.1 If the Supplier achieves all of the Milestones in accordance with the Implementation Plan, the Buyer shall pay the Supplier the full amount of the Milestone Payment subject to Paragraph 4.2. This shall be paid in instalments in accordance with the proportion of the Milestones achieved, the Deliverables for each Milestone, the Implementation Plan, the Milestone Payment set out in Implementation Plan and this Paragraph **Error! Reference source not found..**
- 4.2 The Buyer will pay the relevant proportion of the Milestone Payment to the Supplier based on the Milestone Payments set out in the Implementation Plan and shall demonstrate that these are costs properly incurred (in accordance with the Implementation Plan) for each Milestone that has been successfully achieved by the Supplier.
- 4.3 Subject to Paragraph 9.2, the Milestone Payment (or the relevant proportion of it) will be made by the Buyer within 30 Working Days of receipt of a Valid Invoice from the Supplier provided that the first Milestone Payment shall not be made before 1 April 2025.

5 Indexation

- 5.1 The Annual Charge shall be calculated for each relevant Contract Year (Contract Year n) in accordance with the provisions of this Paragraph 5.
 - 5.1.1 The Base Annual Charge will apply to the Contract Year commencing on the Services Commencement Date.
 - 5.1.2 The adjustments under this Paragraph 5 will first take place on the first day of the second April following the Services Commencement Date and then on 1 April in each subsequent Contract Year in the Contract Period.
 - 5.1.3 The Buyer will calculate the Indexation Factor ("IF") for Contract Year n using the following formula:

$$IF (as \%) = \left(\left(\left(\frac{CPI (Current)}{CPI (Preceding)} \right) - 1 \right) \times 100 \right)$$

where:

CPI (Current) means CPI for the February immediately preceding the start of Contract Year n ;



CPI (Preceding) means CPI for the February immediately preceding the start of Contract Year $n-1$;

Provided that if IF is less than 0% it will be deemed to be 0% and if IF is higher than 5% it will be capped at 5% unless the Buyer in its absolute discretion agrees to accept a higher percentage than 5%, provided that the Buyer will not in any circumstances accept a percentage higher than the IF calculated under this Paragraph.

- 5.2 Once the IF calculation in Paragraph 5.1 has been completed, the Buyer will provisionally apply the IF to the Annual Charge for Contract Year $n-1$ to calculate the Annual Charge for Contract Year n .
- 5.3 The Buyer and the Supplier have agreed that the Annual Charge will not be reduced as a result of the indexation mechanism in this Paragraph 5 from one Contract Year to the next. Therefore if the Annual Charge following provisional recalculation under Paragraph 5.2 for Contract Year n would be lower than the equivalent amount for Contract Year $n-1$ (including by operation of the floor of 0% under the IF calculation in Paragraph 5.1), the Annual Charge from Contract Year $n-1$ will instead be carried over into Contract Year n .
- 5.4 Where, by operation of Paragraph 5.3, in Contract Year n the Annual Charge from Contract Year $n-1$ has been carried over into Contract Year n , when the indexation provisions are applied in Contract Year $n+1$, the value for the Annual Charge to which IF will be applied will be the value calculated for Contract Year n under Paragraph 5.2 prior to and ignoring the operation of Paragraph 5.3.
- 5.5 Without prejudice to (i) Paragraph 5A of Annex D1 and (ii) Paragraph 4A of Annex D2 of Part D of Schedule 7 (Staff Transfer) 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 Subcontractors of the performance of their obligations.
- 5.6 If CPI has not been published for the relevant Month as required for this calculation then the last published value of the index available at the adjustment date shall be used.
- 5.7 Where CPI is no longer published, the Buyer and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.

6 Transition

- 6.1 During the first 3 Months post the service commencement date (the “**Transition Period**”) QPP will not be used in the calculation of the Monthly Contract Price.
- 6.2 The Monthly Contract Price during the Transition Period will be the Monthly Baseline Payment.



7 Financial Information

- 7.1 The Buyer is entitled to request that the Supplier updates the information provided in any Financial Viability Risk Assessment or provides any additional information reasonably requested by the Buyer from time to time during the Contract Period and the Supplier shall comply with such request and provide the Buyer with evidence within 20 Working Days of the request.
- 7.2 The Buyer is entitled to request that the Supplier updates the Financial Response Template following the Buyer's Approval of any Variation in accordance with the Variation Procedure. The Supplier shall comply with such request and provide the Buyer with evidence within 20 Working Days of the request.
- 7.3 The Supplier shall ensure that any update to the information provided under Paragraph 7.1 and Paragraph 7.2 (as applicable) includes sufficient detail for the Buyer to have visibility of all costs (including staff costs) to be incurred by the Supplier and of the Charges to be paid in respect of provision of the Services as well as ensuring there are no significant changes to the financial risk profile of the Supplier, including to meet Open Book Data requirements.

8 Reporting

- 8.1 The Supplier shall, as soon as possible, provide any additional reports that the Buyer may reasonably request in connection with the Buyer's exercise of its rights and obligations under this Schedule 3, including but not limited to monitoring of the Service Levels.

9 Payment for Termination Services and Breakage Costs

- 9.1 Subject to Paragraph 9.2 and if it is agreed pursuant to paragraph 5.2 of Schedule 31 (Exit Management) that the Supplier is entitled to recover reasonable additional costs from the Buyer, the Supplier will be entitled to submit a Valid Invoice to the Buyer for the agreed costs monthly in arrears or otherwise as agreed in writing by the Buyer and the Supplier.
- 9.2 Notwithstanding Paragraph 9.1, any such payments requested by the Supplier shall be limited to properly incurred Contract Breakage Costs only provided that such costs:
- 9.2.1 Could not otherwise be recovered by the Supplier, including through appropriate insurance;
 - 9.2.2 have been demonstrated to the Buyer by the Supplier with evidence of such costs having been incurred (to the Buyer's reasonable satisfaction); and



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- 9.2.3 have been mitigated and the Supplier had demonstrated how it is mitigated such costs to the extent that such costs were reasonably foreseeable.



Annex 1 – Financial Response Template

REDACTED Under Section 43 of the FOIA: Commercial Interests

Annex 2: Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Ref	Description	Potential time impact if not accurate	Potential cost impact if not accurate	How it will be tested	Maximum impact period	Verification period



Schedule 4 (Tender)

SUPPLIER SOLUTION

Section	Question	PDF Attachment
Service Delivery	MED-SD	REDACTED Under Section 43 of the FOIA: Commercial Interests
People, Change and Culture	MED-PCC	REDACTED Under Section 43 of the FOIA: Commercial Interests
Mobilisation and Transition	MED-MT	REDACTED Under Section 43 of the FOIA: Commercial Interests
Digital and Security	DS-SG1 - Solution General - Solution Overview	REDACTED Under Section 43 of the FOIA: Commercial Interests
	DS_SG2 – Solution General - Security	REDACTED Under Section 43 of the FOIA: Commercial Interests
	DS-CH - Cloud Hosting & GDPR	REDACTED Under Section 43 of the FOIA: Commercial Interests
	DS-In - Interfaces	REDACTED Under Section 43 of the FOIA: Commercial Interests
Social Value	SV	REDACTED Under Section 43 of the FOIA: Commercial Interests



Schedule 5 (Commercially Sensitive Information)

1 What is the Commercially Sensitive Information?

- 1.1 In this Schedule 5 the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which may be the subject of an exemption under the FOIA and the EIRs and as required in accordance with the guidance ([Guidance on the Transparency Requirements for Publishing on Contracts Finder \(HTML\) - GOV.UK \(www.gov.uk\)](#)) on the Transparency Requirements for Publishing on Contracts Finder (as updated from time to time).
- 1.2 Where possible, the Parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose information in accordance with FOIA or Clause 20, the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following information:

No.	Date	Item(s)	Duration of Confidentiality	Relevant Exemption



Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 available at:

<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) as updated from time to time. The Supplier shall comply with the provisions of this Schedule 6 to assist the Buyer with its compliance obligations under the PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within 3 Months of the Effective Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule 6.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within 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 do not agree a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports is treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule 6.



Annex A: List of Transparency Reports

Title	Content	Format	Frequency
Charges		To be agreed with the Buyer	Quarterly
Key Subcontractors		To be agreed with the Buyer	Quarterly
Technical		To be agreed with the Buyer	Quarterly
Performance management		To be agreed with the Buyer	Quarterly
Social value	Reporting on performance against social value obligations	To be agreed with the Buyer	Quarterly
Living Wage		To be agreed with the Buyer	Annual
Supplier Index	Reporting on performance in Supplier Index	To be agreed with the Buyer	Annual
Customer Satisfaction Index	Reporting on performance in Customer Satisfaction Index	To be agreed with the Buyer	Annual



Schedule 7 (Staff Transfer)

1 Definitions

- 1.1 In this Schedule 7, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Admission Agreement" either or both of the CSPA Admission Agreement (as defined in Schedule 1Part 1Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Schedule 1Part 1Annex D3: LGPS), as the context requires;

"Employee Liability" all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring



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Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;

- (f) claims whether in tort, contract or statute or otherwise;
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Fair Deal Employees"

as defined in Part D;

"Former Supplier"

a supplier supplying the Services to the Buyer before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

"New Fair Deal"

the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes Schedule 1Part 1Annex D1-Schedule 1Part 1Annex D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;

"Notified Subcontractor"

a Subcontractor identified in the Annex to this Schedule 7 to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;



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"Old Fair Deal"	HM Treasury Guidance " <i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i> " issued in June 1999 including the supplementary guidance " <i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i> " issued in June 2004;
"Partial Termination"	the partial termination of the relevant contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);
"Replacement Subcontractor"	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
"Staffing Information"	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, all information required in Annex E2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make



	changes to the format or information requested in Annex E2 from time to time.
"Statutory Schemes"	means the CSPA, NHSPA or LGPS as defined in the Annexes to Part D of this Schedule 7;
"Supplier's Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Staff List"	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Transferring Buyer Employees"	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

2 Interpretation

Where a provision in this Schedule 7 imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier is liable for satisfying any such claim as if it had provided the indemnity itself.

3 Which parts of this Schedule apply

The following parts of this Schedule 7 apply to the Contract:

- 3.1 Schedule 7Part A (Staff Transfer At Operational Services Commencement Date – Transferring Employees from the Buyer to the Supplier) – N/A;



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- 3.2 Part B (Staff Transfer At Operational Services Commencement Date – Transfer From Former Supplier) – N/A;
- 3.3 Part C No staff transfer on operation service commencement date.
- 3.4 [Part D (Pensions) – N/A
 - 3.4.1 [- Schedule 1Part 1Annex D1 (CSPS)];
 - 3.4.2 [- Schedule 1Part 1Annex D2 (NHSPS)];
 - 3.4.3 [- Schedule 1Part 1Annex D3 (LGPS)];
 - 3.4.4 [- **Error! Reference source not found.** (Other Schemes)].
- 3.5 Part E (Staff Transfer on Exit) of this Schedule will always apply to the Contract, including:
 - 3.5.1 Schedule 7Part EAnnex E1 (List of Notified Subcontractors);
 - 3.5.2 Annex E2 (Staffing Information).



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Part A: Staff Transfer at the Start Date

**Transferring Employees from the Buyer to the Supplier
– N/A**



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Part B: Staff Transfer at the Start Date

**Transfer from a Former Supplier on Re-procurement –
N/A**



Part C: No Staff Transfer on the Start Date

1 What happens if there is a staff transfer

- 1.1 The commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that their contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier;
 - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment; and
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- (a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities



arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall: (a) comply with such obligations as may be imposed upon it under Law; and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Schedule 7.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 do not apply to any claim:
 - 1.5.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief;
 - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
 - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 do not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall: (i) comply with the provisions of Part D: Pensions of this Schedule 7; and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.



2 Limits on the Former Supplier's obligations

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.



Part D: Pensions

1 Definitions

In this Part D and Part E, the following words have the following meanings and supplement Schedule 1, and are deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	(c) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and (d) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and "Broad Comparability" is construed accordingly;
"CSPS"	the schemes as defined in Schedule 1Part 1Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Schedule 1Part 1Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPS Eligible Employees (as defined in Schedule 1Part 1Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Schedule 1Part 1Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Schedule 1Part 1Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);



"Fair Deal Employees"	those: (e) Transferring Buyer Employees; and/or (f) Transferring Former Supplier Employees; and/or (g) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraph Part C1.2.4 of Part C; (h) where the Former Supplier becomes the Supplier those employees; who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;
"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Schedule 1Part 1Annex D3 to this Part D;
"LGPS"	the schemes as defined in Schedule 1Part 1Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Schedule 1Part 1Annex D2 to this Part D;
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i>" issued in October 2013 including: (i) any amendments to that document immediately prior to the Relevant Transfer Date; and (j) any similar pension protection in accordance with the subsequent Error! Reference source not found.-Schedule 1Part 1Annex D3



	inclusive as notified to the Supplier by the Buyer.
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2 Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of AnnexSchedule 1Part 1Annex D1: CSPA, Schedule 1Part 1Annex D2: NHSPS and/or Schedule 1Part 1Annex D3: LGPS apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
 - 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 2.3.2 subject to Paragraph 5 of Schedule 1Part 1Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3 Supplier obligation to provide information

- 3.1 The Supplier undertakes to the Buyer:



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- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of the Contract.

4 Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
 - 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any Default by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
 - 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
 - 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the Contract;
 - (b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the Contract; and/or



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- 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Contract Period.

4.2 The indemnities in this Part D and its Annexes:

- 4.2.1 survive termination of the Contract; and
- 4.2.2 are not affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

5 What happens if there is a dispute

5.1 The Dispute Resolution Procedure does not apply to this Part D and any dispute: (i) between the Buyer and the Supplier; or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Parties be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
- 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
- 5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.

5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6 Other people's rights

- 6.1 Clause 23 (Other people's rights in this contract) does not apply and the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Supplier under this Part D, in their or its own right under section 1(1) of the CRTPA.
- 6.2 The Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in their or its own right under section 1(1) of the CRTPA.

7 What happens if there is a breach of this Part D

- 7.1 The Supplier shall notify the Buyer should it Default on any obligations it has under this Part D and the Buyer may terminate the Contract for Material Default and the consequences of termination set out in Clause 14.5.1 apply if the Supplier:



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- 7.1.1 commits an irremediable Default of any provision or obligation it has under this Part D; or
- 7.1.2 commits a Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the Default and requiring the Supplier to remedy it.

8 Transferring New Fair Deal Employees

- 8.1 Save on expiry or termination of the Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall and shall procure that any relevant Subcontractor shall:
 - 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Schemes;
 - 8.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
 - 8.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9 What happens to pensions if this contract ends

- 9.1 The provisions of Part E: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of the Contract.
- 9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10 Broadly Comparable Pension Schemes On The Relevant Transfer Date



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- 10.1 If the terms of any of Paragraphs 4 of Schedule 1Part 1Annex D2: NHSPS or 3.1 of Schedule 1Part 1Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the Relevant Transfer Date;
 - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
 - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than 7 days after receipt of the certificate;
 - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable



pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the Contract:

10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3.3) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement



Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph 10.

11 Broadly Comparable Pension Schemes In Other Circumstances

- 11.1 If the terms of any of Paragraphs 2.1 of Schedule 1Part 1Annex D1: CSPS, 5.2 of Schedule 1Part 1Annex D2: NHSPS and/or 3.2 of Schedule 1Part 1Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:
 - 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
 - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
 - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
 - 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate



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of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than 7 days after receipt of the certificate;

- 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
 - 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially



equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits (the "**Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier indemnifies the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph 11.

12 Right Of Set-Off

12.1 The Buyer may set off against any payments due to the Supplier under the Contract an amount equal to:

- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under the Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraph 12.1.

Annex D1: Civil Service Pension Schemes

1 Definitions

In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings and supplement Schedule 1:

"CSPA Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
"CSPA Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPA Admission Agreement;
"CSPA Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal; and
"CSPA"	The "Alpha" pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme.

2 Access to equivalent pension schemes after transfer

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of the Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.



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- 2.2 If the Supplier and/or any of its Subcontractors enters into a CSPS Admission Agreement in accordance with Paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of Paragraph 11 of Part D.



Annex D2: NHS Pension Schemes

1 Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and supplement Schedule 1:

"Direction Letter/Determination"	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;
"NHS Broadly Comparable Employees"	means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either: (k) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or (l) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier), but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide



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	Pension Benefits that are Broadly Comparable to those provided under the NHSPS;
"NHSPS Eligible Employees"	any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter;
"NHSPS Fair Deal Employees"	means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
	(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
	(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),
	and, in each case, being continuously engaged for more than 50% of their employed time in the delivery of services (the same as or similar to the Services).
	For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body



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	which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;



"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
"Retirement Benefits Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2 Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of the Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
- 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
 - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.



- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3 Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

4 NHS Broadly Comparable Employees

The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. This requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2.

5 What the Buyer will do if the Supplier breaches and/or cancels its pension obligations

- 5.1 The Buyer may make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer if it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with Paragraph 11 of Part D.
- 5.3 If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to



terminate the Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.

- 5.4 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under the Contract or otherwise.

6 Compensation when pension scheme access can't be provided

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:

6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

6.1.2 a Broadly Comparable pension scheme,

- 6.2 the Buyer may allow the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.3 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

7 Indemnities that a Supplier must give

- 7.1 The Supplier indemnifies and keeps indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of their employment rights.

Annex D3: Local Government Pension Schemes

1 Definitions

- 1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and supplement Schedule 1:

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);
"Administering Authority"	in relation to the Fund [insert name], the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name], a pension fund within the LGPS;
["Initial Contribution Rate"]	[XX %] of pensionable pay (as defined in the 2013 Regulations);
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and



"LGPS Fair Deal Employees"	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations which are from time to time applicable to the LGPS.

2 Supplier must become a LGPS admission body

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of the Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement with effect from the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under the Contract.

OPTION 1

- 2.2 [Any LGPS Fair Deal Employees who:
- 2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
 - 2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

OPTION 2

[Any LGPS Fair Deal Employees whether:

- 2.2.3 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or



- 2.2.4 eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3 Broadly Comparable Scheme

- 3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the Contract Period for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

4 Discretionary Benefits

Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

5 LGPS Risk Sharing

- 5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the Contract Period the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial



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Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.

- 5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the Contract Period the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the "**Refund Amount**") where:
- 5.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
 - 5.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Payment**"), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 5.4 The Supplier and any Subcontractors shall at all times be responsible for:
- 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
 - 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
 - 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
 - 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The



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Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;

- 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
 - 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
 - 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
 - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
 - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with Paragraph 5.4 is disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary is final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "Exit Credit"), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within 20 Working Days of receipt of the Exit Credit.



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- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within 20 Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of this Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
 - 5.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within 20 Working Days of receiving the notification under Paragraph 5.7 the Buyer shall either:
- 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
 - 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
 - 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8, the Buyer shall notify the Supplier in writing. If the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. If the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within 7 Working Days of such demand.
- 5.12 This Paragraph 5 survives termination of the Contract.



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Part E: Staff Transfer on Exit

1 Obligations before a Staff Transfer

1.1 Within 20 Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the Contract; and
- 1.1.3 the date which is 12 Months before the end of the Contract Period; or
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor

- 1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
- 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.

1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraphs 1.1, 1.1.2 and 1.1.3, the Supplier shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):



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- 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person they replace
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
- 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice



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to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;

- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
 - 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
 - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of the Contract (including identification of the Fair Deal Employees);
 - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph Part D3.1.1 of Part D which the Buyer may reasonably request in advance of the expiry or termination of the Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of the Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Contract Period, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require including:
- 1.6.1 the numbers of Supplier Staff engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each Supplier Staff engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D); and



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1.6.4 a description of the nature of the work undertaken by each Supplier Staff by location.

1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay;

1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;

1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and

1.7.8 bank/building society account details for payroll purposes.

1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that following within 20 Working Days of a request from the Authority it shall and shall procure that each Subcontractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Staff to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.

1.9 Any changes necessary to the Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

2 Staff Transfer when the contract ends

2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part



of the Services) may change (whether as a result of termination or Partial Termination of the Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee

- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff List arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier indemnifies the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
 - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring before but excluding the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or



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- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of the Contract and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent



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that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 2.4 The indemnity in Paragraph 2.3 does not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that their contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
 - 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;



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and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 does not apply to:

2.6.1 any claim for:

- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 6 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:



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- 2.9.1 the Supplier and/or any Subcontractor; and
- 2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11 Subject to Paragraph 2.12, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
 - 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
 - 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
 - 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the



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Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;
- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of



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the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.12 The indemnity in Paragraph 2.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7).



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Annex E1: List of Notified Subcontractors



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Annex E2: Staffing Information

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: [Insert name of Transferor]

Number of Employees in-scope to transfer: []



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[illegible]



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		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							



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PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	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 Check Level	Security Clearance Expiry date	Additional info or comments			

Schedule 8 (Implementation Plan and Testing)

Part A - Implementation

1. Definitions

- 1.1 In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Delay"	(a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Deliverable Item"	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Implementation Period"	has the meaning given to it in Paragraph 7.1;
"Milestone Payment"	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

2. Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule 8. The Supplier shall provide a further draft Implementation Plan 14 Working Days after the Effective Date.
- 2.2 The draft Implementation Plan:
- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
 - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within 20 Working Days of its submission, then such

Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

3. Reviewing and changing the Implementation Plan

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a Material Default.

4. Security requirements before the Start Date

- 4.1 The Supplier shall note that it is incumbent upon it to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall provide all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has

been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.

- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5. What to do if there is a Delay

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under the Contract it shall:
- 5.1.1 notify the Buyer as soon as practically possible and no later than within 2 Working Days from becoming aware of the Delay or anticipated Delay;
 - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
 - 5.1.3 comply with the Rectification Plan Process and reasonable Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6. NOT USED

7. Implementation Plan

- 7.1 The Implementation Period will be a 6 Month period.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise agreed with the Buyer. The Supplier's full service obligations shall be assumed on the Start Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
- 7.3.1 work cooperatively and in partnership with the Buyer and any third party contractors as well as the incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
 - 7.3.2 work with the incumbent supplier (where applicable) and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
 - 7.3.3 liaise with the incumbent supplier (where applicable) to enable the full completion of the Implementation Period activities; and

- 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
 - 7.4.1 how the Supplier will work with the Buyer and its relevant Third Party providers, including (where applicable) the incumbent supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and
 - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:
 - 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
 - 7.5.2 mobilise all the Services specified in the Specification within the Contract;
 - 7.5.3 manage and report progress against the Implementation Plan;
 - 7.5.4 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
 - 7.5.5 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
 - 7.5.6 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.

Annex 1: Implementation Plan

The Implementation Plan and the Milestones to be Achieved are set out below:

Milestone	Deliverable Items	Duration	Milestone Date	Buyer Responsibilities	Milestone Payments	
[]	[]	[]	[]	[]	[]	
The Milestones will be Achieved in accordance with Part A of this Schedule 8. Please refer to attached document – REDACTED Under Section 43 of the FOIA: Commercial Interests						

Part B - Testing

1. Definitions

- 1.1 In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (*Definitions*):

"Component"	any constituent parts of the Deliverables;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Satisfaction Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"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 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 6.2;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 3.2;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5;

"Test Witness"	any person appointed by the Buyer pursuant to Paragraph 9; and
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in this Schedule 8.

2. How testing should work

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
 - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverables; and
 - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverables.
- 2.3 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.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3. Planning for testing

- 3.1 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 after the Effective Date.
- 3.2 The final Test Strategy shall include:
 - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 3.2.4 the procedure to be followed to sign off each Test;
 - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
 - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;

- 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

4. Preparing for Testing

- 4.1 The Supplier shall develop Test Plans for the relevant Testing as specified in the Implementation Plan and submit these for Approval as soon as practicable but in any case, no later than 20 Working Days prior to the date of the relevant Test.
- 4.2 Each Test Plan shall include as a minimum:
 - 4.2.1 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; and
 - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

5. Passing Testing

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

6. How Deliverables will be tested

- 6.1 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 prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
 - 6.2.1 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;
 - 6.2.2 a plan to make the resources available for Testing;
 - 6.2.3 Test scripts;
 - 6.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 6.2.5 expected Test results, including:
 - a) a mechanism to be used to capture and record Test results; and
 - b) a method to process the Test results to establish their content.

7. Performing the tests

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 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 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
 - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
 - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 7.6.1 an overview of the Testing conducted;
 - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
 - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 7.6.4 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 8.1; and
 - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 7.8 Subject to Paragraph 7.9, each Party shall bear its own costs in respect of the Testing.
- 7.9 If a Milestone is not Achieved the Buyer may recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing of that Milestone.
- 7.10 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction

Certificate, the Supplier remains solely responsible for ensuring that the Deliverables are implemented in accordance with the Contract.

8. Discovering Problems

- 8.1 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.
- 8.2 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.
- 8.3 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.

9. Test witnessing

- 9.1 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.
- 9.2 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.
- 9.3 The Test Witnesses:
 - 9.3.1 shall actively review the Test documentation;
 - 9.3.2 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;
 - 9.3.3 shall not be involved in the execution of any Test;
 - 9.3.4 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;
 - 9.3.5 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;
 - 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

10. Auditing the quality of the test

- 10.1 The Buyer or a person appointed by 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.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall 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.
- 10.6 If the Supplier does respond to the Buyer's report to the Buyer's satisfaction, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

11. Outcome of the testing

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
 - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
 - 11.2.2 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
 - 11.2.3 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 Material Default.
- 11.3 The Buyer may, without prejudice to any other rights and remedies that it has under the 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.

- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 11.4.2 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.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 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 Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issues, the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Material Default.
- 11.9 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 Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction 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 10.5); and
 - 11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may revise the failed Milestone Date and any subsequent Milestone Date.

12. Risk

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
- 12.1.1 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
 - 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

Annex 1: Test Issues – Severity Levels

1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, for example, it is not possible to continue using a Component.

2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - 2.1.1 causes a Component to become unusable;
 - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.1.3 has an adverse impact on any other Components or any other area of the Deliverables.

3. Severity 3 Error

- 3.1 This is an error which:
 - 3.1.1 causes a Component to become unusable;
 - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.1.3 has an impact on any other Component or any other area of the Deliverables;but for which, as reasonably determined by the Buyer, there is a practicable workaround available.

4. Severity 4 Error

- 4.1 This is an error 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 Deliverables.

5. Severity 5 Error

- 5.1 This is an error 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 Deliverables.

Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Contract**") [insert Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [insert Buyer name] ("**Buyer**") and [insert Supplier name] ("**Supplier**") dated [insert Effective Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in the Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted 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 Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]



Schedule 10 (Service Levels)

1 Definitions

- 1.1 In this Schedule, the following words have the following meanings and supplement Schedule 1 (Definitions):

"Critical Service Level Failure"	has the meaning given to it in the Award Form;
"Performance Monitoring Reports"	has the meaning given to it in paragraph Part B1.2 in the Annex to Part B of this Schedule 10;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	is as set out against the relevant Service Level in the Annex to Schedule 10Part A of this Schedule 10; and
"Service Level Threshold"	The threshold shall be as set out against the relevant Service Level in the Annex to Schedule 10Part A of this Schedule 10 – anything below the "Requires Improvement" level would be below the Service Level Threshold.

2 What happens if you do not meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 Any Service Level Failure entitles the Buyer to the rights set out in Schedule 10Part A of this Schedule 10 including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B of this Schedule 10.
- 2.4 A Service Credit is the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;



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- (c) results in the corruption or loss of any Government Data; and/or
- (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.2 the Buyer is also entitled to or does terminate the Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).

2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least 3 Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards.

3 Critical Service Level Failure

3.1 On the occurrence of a Critical Service Level Failure:

3.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.1.2 the Buyer shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"),

provided that the operation of this Paragraph 3 is without prejudice to the right of the Buyer to terminate the Contract and/or to claim damages from the Supplier for Material Default.

Part A: Service Levels and Service Credits

1 Service Levels

1.1 If the level of performance of the Supplier:

1.1.1 is likely to or fails to meet any Service Level Performance Measure; or

1.1.2 is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

1.1.3 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

1.1.4 instruct the Supplier to comply with the Rectification Plan Process;

1.1.5 if a Service Level Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or

1.1.6 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 apply).

2 Service Credits

2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Schedule 3 (Charges).

Annex A To Part A: Service Levels and Service Credits Table

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				Performance Shortfall			KPI Target			
KPI No	Key Performance Indicators	Applicable proportion of QPP	KPI% Weighting	Performance failure	Minor (33%)	Medium (67%)	Major (100%)	Good	Approaching Target	Requires Improvement
KPI 1	The tool will deliver target uptime availability between 8am-5pm Monday – Friday	Yes	20%	Failure to ensure the tool is available according to desired uptime	0.9%	1.0%	≥2%	99.90%	99%	98%
KPI 2	The Supplier delivers uptime availability on contingency service during the core day 8am-5pm Monday – Friday	Yes	20%	Failure to ensure the contingency service is available according to desired uptime	0.9%	1.0%	≥2%	99.90%	99%	98%
KPI 3	Priority calls: Priority calls are responded to within their set timeframe.	Yes	20%	Failure to respond to calls within the prescribed timescales	0.9%	1.0%	≥2%	99.90%	99%	98%

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KPI 4	Priority calls: Issues raised in Priority Calls are resolved within their set timeframe.	Yes	20%	Failure to successfully fix issues within the prescribed timescales	0.9%	1.0%	≥2%	99.90%	99%	98%
KPI 5	Respond to queries / escalations from the Core Education Providers via the Authority relating to issues with the tool content within 2 Working Days	Yes	20%	Failure to respond to escalations within the prescribed timescales	0.9%	1.0%	≥2%	99.90%	99%	98%

Part B: Performance Monitoring

1 Performance Monitoring and Performance Review

- 1.1 Within 20 Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") each Month. The Performance Review Meetings will be the forum for the review by the Parties of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.3.1 take place within one week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;

- 1.3.2 be attended by the Supplier's Authorised Representative and the Buyer's Authorised Representative; and
- 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Authorised Representative and any other recipients agreed at the relevant meeting.

- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Authorised Representative and the Buyer's Authorised Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2 Satisfaction Surveys

The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer may notify the Supplier of any aspects of its performance of the provision of the Deliverables which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Contract.



Schedule 11 (Continuous Improvement)

1 Supplier's Obligations

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 The Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of the Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 1.3.1 identifying the emergence of relevant new and evolving technologies;
 - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
 - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first Contract Year shall be submitted by the Supplier to the Buyer for Approval within 6 Months of the Effective Date.
- 1.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within 20 Working Days of receipt. If it is rejected then the Supplier shall, within 10 Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the



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changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of the Contract.

- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into the Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan is Approved in accordance with Paragraph 1.5:
 - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.



Schedule 12 (Benchmarking)

1 Definitions

1.1 In this Schedule 12, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Benchmark Review"	a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;
"Benchmarked Deliverables"	any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;
"Benchmarked Rates"	the Charges for the Benchmarked Service and/or Benchmarked Deliverables, as applicable;
"Benchmarked Service"	a Service included within the scope of a Benchmark Review pursuant to this Schedule;
"Comparable Rates"	the Charges for Comparable Deliverables;
"Comparable Deliverables"	deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark;
"Comparison Group"	a sample group of organisations providing Comparable Deliverables 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 fair comparators with the Supplier or which, are best practice organisations;
"Equivalent Data"	data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;



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"Good Value"

that the Benchmarked Rates are within the Upper Quartile; and

"Upper Quartile"

in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables.

2 When you should use this Schedule

- 2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables represent value for money to the taxpayer throughout the Contract Period.
- 2.2 This Schedule 12 sets out to ensure the Contract represents value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3, in which case the consequences of termination set out in Clause 14.5.1 apply.
- 2.3 Amounts payable under this Schedule 12 do not fall with the definition of a Cost.

3 Benchmarking

3.1 How benchmarking works

- 3.1.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.
- 3.1.2 The Buyer shall not request a Benchmark Review during the first 6 Months after the Start Date or at intervals of less than 12 Months after any previous Benchmark Review.
- 3.1.3 The purpose of a Benchmark Review is to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.
- 3.1.4 The Deliverables to be the Benchmarked Deliverables will be identified by the Buyer in writing.
- 3.1.5 Upon its request for a Benchmark Review the Buyer shall nominate a benchmarker. The Supplier must approve the nomination within 10 Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative benchmarker. If the Parties cannot agree the



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appointment within 20 days of the initial request for Benchmark review then a benchmarker will be selected by the Chartered Institute of Financial Accountants.

- 3.1.6 The cost of a benchmarker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

3.2 Benchmarking Process

- 3.2.1 The benchmarker shall produce and send to the Buyer for Approval, a draft plan for the Benchmark Review which must include:
- (a) a proposed cost and timetable for the Benchmark Review;
 - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, may use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within 10 Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the benchmarker shall:
- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in



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terms of number and identity) shall be a matter for the benchmarker's professional judgment using:

- (i) information from other service providers to the Buyer;
 - (ii) survey information;
 - (iii) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
 - (iv) market intelligence;
 - (v) the benchmarker's own data and experience;
 - (vi) relevant published information; and
 - (vii) pursuant to Paragraph 3.2.6, information from other suppliers or purchasers on Comparable Rates;
- (b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
- (c) using the Equivalent Data, calculate the Upper Quartile; and
- (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier shall use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates; and
- (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.



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3.3 Benchmarking Report

- 3.3.1 For the purposes of this Schedule 12 "**Benchmarking Report**" means the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule 12;
- 3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall:
- (a) Include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
 - (b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
 - (c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.
- 3.3.3 Any changes required to the Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 28.



Schedule 13 (Contract Management and Governance)

1 Definitions

- 1.1 In this Schedule, the following words have the following meanings and supplement Schedule 1 (Definitions):

"Operational Board"	the board established in accordance with Paragraph 5.1; and
"Project Manager"	the manager appointed in accordance with Paragraph 3.1.

- 1.2 This Schedule 13 describes the approach to governance arrangements to be adopted by the Parties in meeting the requirements of the Contract.

- 1.3 The governance approach includes:

- 1.3.1 how the Parties will manage the relationship between them; and
- 1.3.2 the specific governing structures under which the Parties will operate

2 Representatives

- 2.1 Buyer's Authorised Representative

- 2.1.1 The Buyer shall appoint an individual to exercise the Buyer's Authorised Representative role pursuant to this Paragraph 2.1.
- 2.1.2 The Buyer's Authorised Representative shall exercise the functions and powers of the Buyer in relation to this Contract which are identified in this Contract as functions or powers to be carried out by the Buyer's Authorised Representative. The Buyer's Authorised Representative shall also exercise such other functions and powers of the Buyer under this Contract as may be notified to the Supplier from time to time. The Buyer's Authorised Representative shall have the authority to act on behalf of the Buyer on matters set out in, or in connection with, this Contract.
- 2.1.3 The Buyer's Authorised Representative shall be entitled at any time, by notice to the Supplier, to authorise any other person to exercise the functions and powers of the Buyer delegated to the Buyer's Authorised Representative pursuant to this Paragraph 2.1, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Buyer's Authorised Representative and all references to the "Buyer's Authorised Representative" in this Contract (apart from this sub-Paragraph (2.1.3)) shall be taken as references to



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such person as far as they concern matters within the scope of such person's authority.

2.1.4 The Buyer may by notice to the Supplier revoke or amend the authority of the Buyer's Authorised Representative or change the Buyer's Authorised Representative.

2.1.5 During any period when no Buyer's Authorised Representative has been appointed (or when the Buyer's Authorised Representative is unable through illness, incapacity, or any other reason whatsoever to carry out or exercise his or her functions under this Contract) the Buyer shall carry out the functions which would otherwise be performed by the Buyer's Authorised Representative.

2.2 Supplier's Authorised Representative

2.2.1 The Supplier shall appoint an individual to exercise the Supplier's Authorised Representative role pursuant to this Paragraph 2.2.

2.2.2 The Supplier warrants that Supplier's Authorised Representative shall have full authority to act on behalf of the Supplier for all matters set out in, or in connection with, this Contract.

2.2.3 The Supplier may by notice to the Buyer, change the Supplier's Authorised Representative. Where the Supplier wishes to do so it shall, by written notice to the Buyer, propose a substitute representative, taking account of the need for liaison and continuity in respect of this Contract. Such appointment shall be subject to the Approval of the Buyer (not to be unreasonably withheld or delayed).

2.2.4 The Supplier's Authorised Representative shall be entitled at any time, by notice to the Buyer and having obtained the prior Approval of the Buyer, to authorise any other sufficiently qualified and authorised person to exercise the functions and powers of the Supplier delegated to the Supplier's Authorised Representative pursuant to this Paragraph 2.2, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Supplier's Authorised Representative and all references to the "Supplier's Authorised Representative" in this Contract (apart from this sub-Paragraph 2.2.4) shall be taken as references to such person as far as they concern matters within the scope of such person's authority.

2.3 Appointment of Representatives

2.3.1 At any time, the Buyer may appoint more than one Buyer's Authorised Representative and the Supplier may appoint more than one Supplier's Authorised Representative provided in each case the appointer provides



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written confirmation to the Supplier or Buyer as appropriate of the extent of its representative's authority. It is intended that each Buyer Group Member has at all times a counterpart Supplier Group Member of equivalent seniority and expertise.

2.4 Management of the Services

- 2.4.1 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 Project Management

- 3.1 Each Party shall appoint a Project Manager for the purposes of the Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 3.2 The Parties shall ensure that appropriate resources are available such that the aims, objectives and specific provisions of the Contract can be fully realised.
- 3.3 Without prejudice to Paragraph 5, the Parties shall operate the boards specified in the Schedule 10345021Part 0Annex to this Schedule 13.

4 Role of the Supplier Project Manager

- 4.1 The Supplier Project Manager is:
- 4.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
 - 4.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
 - 4.1.3 able to cancel any delegation and recommence the position himself; and
 - 4.1.4 replaced only after the Buyer has received notification of the proposed change.
- 4.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it is the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 4.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.



5 Role of the Operational Board

- 5.1 The Operational Board is established by the Buyer for the purposes of the Contract on which the Supplier and the Buyer are represented.
- 5.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Schedule 10345021Part 0Annex to the Schedule.
- 5.3 If either Party wishes to replace any of its appointed board members, it shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 5.4 Each Party shall ensure that its board members 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 ensure that a delegate attends the Operational Board meeting in their place (wherever possible) and that the delegate is properly briefed and prepared and that they are debriefed by such delegate after the board meeting.
- 5.5 The purpose of the Operational Board meetings is to review the Supplier's performance under the Contract. The agenda for each meeting is set by the Buyer and communicated to the Supplier in advance of that meeting.

6 Contract Risk Management

- 6.1 Both Parties shall pro-actively manage risks attributed to them by the Contract.
- 6.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
 - 6.2.1 the identification and management of risks;
 - 6.2.2 the identification and management of issues; and
 - 6.2.3 monitoring and controlling project plans.
- 6.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 6.4 The Supplier shall maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

7 Governance Groups

- 7.1 Establishment and structure of the Governance Groups



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- 7.1.1 The Governance Groups are the Monthly Contract Review Meeting, Quarterly Contract Review Meeting, Escalation Board, Biannual Supplier Relationship Management Board, Collaboration Forums, National Level Quality Improvement Group and Lot Level Quality Improvement Group, as set out at paragraphs 8 to 13 below (together “the Groups” and each “the Group”). Each Group shall be established by the Buyer for the purposes of this Contract on which both the Supplier and the Buyer shall be represented.
- 7.1.2 The Parties agree and acknowledge that each Group is subject to amendments made by the Buyer at their discretion from time to time (including the right to change the name of any Group) and the Buyer shall have the right to re-organise, replace and change any of the Groups and to create new Groups at any point throughout the Term. Accordingly, the Supplier shall be required to attend any new Group Meetings or any other meetings as may be reasonably be requested by the Buyer from time to time.
- 7.1.3 In relation to each of the Groups, the:
- (a) Buyer Group Members;
 - (b) Supplier Group Members;
 - (c) Other Group Members;
 - (d) frequency that the Group shall meet (unless otherwise agreed between the Parties);
 - (e) location of the Group's meetings (unless otherwise agreed between the Parties); and
 - (f) planned start date by which the Group shall be established,
- are set out in the Schedule 10345021Part 0Annex (*Governance Groups Details*) all of which are subject to changes dictated by the Buyer in their discretion from time to time.
- 7.1.4 If either Party wishes to replace any of its appointed Group Members, that Party shall notify the other Party in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). It is intended that each Buyer Group Member has at all times a counterpart Supplier Group Member of equivalent seniority and expertise.
- 7.1.5 The Buyer shall not be prevented from making decisions or reaching agreement by processes and means provided for elsewhere in this



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Contract, as a result of the governance arrangements set out in this Schedule 13.

- 7.1.6 The Parties agree that the implementation of the governance structures and processes set out in this Schedule 13 (and any changes to these governance structures and processes agreed between the Parties) will not result in any increase in the Charges payable under this Contract. The Supplier should plan to attend all meetings but the attendees at specific meetings shall be decided by the Buyer.
- 7.1.7 In addition to the Groups, working groups may be set up to enable specific issues to be resolved and brought to the Groups for decision making/implementation.
- 7.1.8 The Supplier shall also attend any other meetings as reasonably required by the Buyer, including (without limitation) digital and data governance meetings.

7.2 Governance Group meetings

- 7.2.1 Each Party shall ensure that its Group Members shall make all reasonable efforts to attend meetings of the Groups (the "Group Meetings") at which that Group Member's attendance is required. If any Group Member is not able to attend a Group Meeting, that person shall ensure that:
 - (a) a delegate attends the relevant Group Meeting in their place who (wherever possible) is of appropriate seniority and is properly briefed and prepared; and
 - (b) that they are debriefed by such delegate after the Group Meeting.
- 7.2.2 A chairperson shall be appointed by the Buyer for each Group as identified in the Schedule 10345021Part 0Annex (Governance Groups Details) or as appointed by the Buyer in due course. The chairperson and the vice chairperson shall be responsible for:
 - (a) scheduling Group Meetings;
 - (b) setting the agenda for Group Meetings and circulating this and any relevant papers to all attendees in advance of such meetings, with a minimum of five (5) Working Days;
 - (c) chairing the Group Meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Group Meetings;



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- (e) ensuring that minutes for Group Meetings are recorded and disseminated electronically to the appropriate persons and to all Group meeting participants within five (5) Working Days after the Group Meeting, or prior to the next Group Meeting, whichever comes first; and
- (f) facilitating the process or procedure by which any decision agreed at any Group Meeting is given effect in the appropriate manner.

7.2.3 The Parties shall ensure, as far as reasonably practicable, that the Groups shall resolve the issues and achieve the objectives placed before them. Each Party shall ensure that Group Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this subject to the overarching principle, a decision properly reached by a Group in accordance with this Schedule that falls within the remit of that Group will be binding on both Parties.

7.2.4 The Parties agree and acknowledge that no Group has the power or authority to amend or waive any provision of this Contract. Any amendment to the Contract may only be made through the Change Control Procedure. A waiver of any provision of this Contract may only be given in writing by the Buyer/Supplier Representative (as appropriate).

7.2.5 Each Party shall pay its own costs and expenses in relation to attendance at Group Meetings.

7.2.6 Group Meetings shall be quorate as long as at least the Buyer Representative(s) is present.

8 Monthly Contract Review Meeting

8.1 The Monthly Contract Review Meeting, as set out in the Schedule 10345021Part 0Annex (Governance Groups Details), shall undertake the roles stated below. It is proposed that the Monthly Contract Meeting takes place in each of the three (3) Months following the Effective Date and thereafter, unless requested by the Buyer, shall be replaced by the Quarterly Contract Review Meeting. If they are so replaced, and for the period that they are replaced, the roles stated below shall, as far as is relevant, form part of the roles of the Quarterly Contract Review Meeting

8.1.1 ensure mutual understanding of obligations, goals, expectations, duties, and objectives under this Contract;

8.1.2 review delivery of the Services and performance at the Supplier level taking a strategic perspective to reporting and issue resolution;

8.1.3 review delivery of the Mobilisation Plan and the Mobilisation Phase;



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- 8.1.4 cover all elements of the Services and is the forum for escalation of contractual delivery or dependency issues;
- 8.1.5 review Key Performance Indicators, and obligations across the Supplier's contract areas;
- 8.1.6 on a quarterly basis, agree the updated Improvement Plan;
- 8.1.7 discuss external/internal audits and agree related contractual actions (HMIP, Ofsted, OSAG);
- 8.1.8 discuss contractual assurance and compliance activity and findings;
- 8.1.9 discuss risks, issues, and opportunities;
- 8.1.10 agree points for escalation to Quarterly Contract Review Meeting (if relevant); and
- 8.1.11 to agree actions, progress, and next steps from previous meetings.

8.2 This meeting and its outputs should inform the Quarterly Contract Review Meetings.

9 Quarterly Contract Review Meeting

9.1 The Quarterly Contract Review Meeting, as set out in the Schedule 10345021Part 0Annex (Governance Groups Details), shall:

- 9.1.1 include finance (including reconciliation and agreeing performance payment related to any moderated KPIs), commercial, performance, staffing, compliance, relationship management and any other relevant topics as and when required;
- 9.1.2 review and discuss the performance of the Supplier both under this Contract and any other contract that the Supplier may have been awarded for another Lot, if applicable (noting that actions concerning a different Lot will need to be taken under the appropriate contract);
- 9.1.3 review and discuss the Provider Performance Report as set out in this Schedule;
- 9.1.4 ensure mutual understanding of obligations, goals, expectations, duties, and objectives in entering and performing obligations under this Contract;
- 9.1.5 ensure all parties remain aligned in delivering this Contract effectively;
- 9.1.6 ensure any changes within this Contract are documented in accordance with the Change Control Procedure and well managed;



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- 9.1.7 once per annum; this meeting will take the form of an Annual Contract Review Meeting at which discussions will include but not be limited to:
- 9.1.8 A review of the Supplier's performance of this Contract including against all KPIs for the full Contract Year; and
- 9.1.9 A review of any feedback on the quality of the Services and the Supplier's performance as may be provided by Prisons, the Buyer, Other Suppliers, Core Education Providers, the Groups and any other third party or Group as the Buyer may reasonably require.
- 9.1.10 when and where relevant to discuss Exit Plan/strategy pursuant to Schedule 31 (Exit Management);
- 9.1.11 and any other business as may be directed by the Buyer from time to time.

10 Escalation Board

- 10.1 The Escalation Board, as set out in the Schedule 10345021Part 0Annex (Governance Groups Details), shall:
 - 10.1.1 be the highest-level board to raise contractual issues or disputes (at a national level or below), which have not been resolved at the Quarterly Contract Review Meeting.
 - 10.1.2 if this Escalation Board is unable to reach a resolution for the disputes, the formal Dispute Resolution process as set out in the Core Terms Section 39 Resolving Disputes will commence, which the Supplier will be expected to engage with.

11 Collaboration Forums

- 11.1 The Collaboration Forums shall:
 - 11.1.1 provide an environment for promoting collaborative ways of working and partnerships between all parties involved in the provision of the Services, including other Lot members and providers of other educational services such as Core Education Providers.
 - 11.1.2 enable collaboration at local, regional, and national levels.
- 11.2 The Collaboration Forums are:
 - 11.2.1 National Level Quality Improvement Group;
 - 11.2.2 Lot Level Collaboration Forum (with the Core Education Providers and other providers and Buyer in each Lot);



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11.2.3 Provider Level Collaboration Forum; and

11.2.4 National Level Collaboration Forum,

as detailed in the Schedule 10345021Part 0Annex (*Governance Groups Details*) to this Schedule 13.

11.3 The Supplier shall attend and actively engage and contribute to Collaboration Forums at a national level as set out in the Schedule 10345021Part 0Annex (*Governance Groups Details*) to:

11.3.1 through joint problem solving, sharing of best practice, and promoting innovation and efficiencies;

11.3.2 provide an opportunity to identify successes and challenges within the prison;

11.3.3 engage with other invited other attendees who may attend on an ad hoc basis;

11.3.4 discuss potential opportunities to improve the integration, efficiency, and effectiveness of the Services to meet the requirements of an integrated learning environment that increases Prisoner employability or further learning potential on release.

11.4 The Supplier will attend the Provider Level Collaboration Forum quarterly upon the Buyer's request, and actively engage, contribute, and undertake agreed objectives in the Joint Collaboration Plan and participate in regular reviews;

11.5 The Supplier will attend the National Level Collaboration Forum annually and actively engage, contribute and undertake any agreed objectives that may be discussed;

11.6 This list is non-exhaustive, and any other relevant topics may be discussed.

12 Biannual Supplier Relationship Management Board

12.1 The Biannual Supplier Relationship Management Board, as set out in the Schedule 10345021Part 0Annex (*Governance Groups Details*), shall:

12.1.1 ensure strategic alignment with executive level directors of the Supplier; and

12.1.2 facilitate communication and collaboration between partners; to explore shared organisational behaviours and values, and lessons learned and to maintain and build strong and enduring contractual relationships.



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12.2 The Supplier is expected to attend and actively engage in any meetings of the Biannual Supplier Relationship Management Board upon the Buyer's request.

13 Quality Governance Groups

13.1 The Supplier is expected to attend and actively engage in regular meetings and activities regarding tool quality upon the Buyer's request.

13.2 The quality meetings shall:

- 13.2.1 review delivery and co-ordination of the Services and how this links to all education, skills, and work across the prison, including but not limited to the Supplier's provision;
- 13.2.2 review completed quality assurance activities including OFSTED reports, recognising strengths and weaknesses to ensure a cycle of continuous improvement;
- 13.2.3 discuss the National Quality Improvement Plan noting the progress against actions;
- 13.2.4 identify and share best practice;
- 13.2.5 develop and monitor effective quality assurance tools across the whole of education, skills, and work;
- 13.2.6 identify problems early and work together to find solutions and make positive changes;
- 13.2.7 monitor progression and achievement information to make sure Services are consistent, themes are identified, and action is taken where it is needed;
- 13.2.8 listen and respond to the comments of Prisoners, employers, and staff;
- 13.2.9 engage with other invited other attendees who may attend on an ad hoc basis; and
- 13.2.10 any other topics pertaining to the quality of the Services as and when they arise.

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Annex A: Governance Group Details

The Parties shall operate the following boards at the locations and at the frequencies set out below:

Monthly Contract Review Meeting) - Representation and Structure

Buyer Members	Contract Manager (Chair), Justice/HMPPS Digital
Supplier Members	Supplier's Representative Project Manager Other subject matter experts as needed on an ad hoc basis
Supplier Reporting Requirements	Name: Provider Performance Report Purpose: A report setting out the Supplier's actual performance against the contract, including identification of any performance that does not meet expectations and actions being taken to resolve. Owner: The Buyer will provide a template for the document to be completed by the Supplier. Distribution: Justice/HMPPS Digital, Authority Contract Manager and any other attendees as appropriate. Issued 5 Working Days before meeting. And any other reports as required.
Start Date	Effective Date
Frequency	These will be held Monthly from Service Commencement throughout the duration of the Contract Term. Save where the Service Levels are not being met by the Supplier, in which case the Buyer can require that contract management meetings are held more frequently until the Supplier meets the Service Levels or if the continuance (or resumption) of these meetings is requested by the Buyer, on a monthly or bi-monthly basis



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	for such period as the Buyer considers appropriate.
Location	TBA

Quarterly Contract Review Meeting - Representation and Structure

Buyer Members	Senior Contract Manager (Chair), Contract Manager, Finance Lead, Commercial Lead, Justice/HMPPS Digital Others by exception: Quality Manager
Supplier Members	Supplier's Representative
Supplier Reporting Requirements	Name: Quarterly Provider Performance Report Purpose: To inform discussion. Sections likely to be requested include performance, staffing, compliance, relationship management – this list is not exhaustive, and any other topics could be included. Distribution: Meeting attendees. Issued 5 Working Days before meeting. And any other reports as required.
Start Date	Services Commencement Date
Frequency	Quarterly
Location	TBA

Escalation Board - Representation and Structure

Buyer Members	Buyer's Representative Attendees will be dependent on the topic of escalation being discussed, so can include the following but the list is not exhaustive:
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	Head of Education Contracts, Senior Contract Managers, Finance Lead, Commercial Lead, HR Lead, Quality Lead, Legal Lead, Justice/HMPPS Digital Buyer's Representative
Supplier Members	Attendees will be dependent on the topic of escalation being discussed, so can include the following but the list is not exhaustive: Supplier's Representative Any other subject matter experts as needed on an ad hoc basis.
Supplier Reporting Requirements	Will be required to set out requirement for an Escalation Board to be convened, clearly articulating the areas to be considered by the board and the activity that has taken place to avoid escalation within the contractual governance processes.
Start Date	Services Commencement Date
Frequency	Ad hoc – when required.
Location	TBA

National Level Collaboration Forum – Representation and Structure	PES Steward (Chairperson)
Buyer Members	Full list of attendees to be defined but will consist of appropriate Buyer representatives.
Supplier Members	Collaboration Sponsor Other subject matter experts as needed on an ad hoc basis
Supplier Reporting Requirements	As and when required by the Buyer
Start Date	Services Commencement Date
Frequency	Annually



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Location	TBA
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Provider Level Collaboration Forum – Representative and Structure

Buyer Members	PES Steward (Chairperson) Contract Management Lead Commercial Lead Quality Improvement Lead Full list of attendees to be defined but will consist of appropriate Buyer representatives.
Supplier Members	Supplier's Representative Quality Assurance Lead Other subject matter experts as needed on an ad hoc basis
Supplier Reporting Requirements	Joint Collaboration Plan And anything else as and when required by the Buyer
Start Date	Services Commencement Date
Frequency	Quarterly
Location	TBA

Biannual Supplier Relationship Management Board - Representation and Structure

Buyer Members	Governor (Chair) Quality Manager Area executive Director
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	Finance Lead
	Commercial Lead
Supplier Members	Supplier Relationship Manager Specialists as required
Supplier Reporting Requirements	Any other reports if and when required.
Start Date	Services Commencement Date
Frequency	Biannual
Location	TBA

National Level Quality Improvement Group – Representation and Structure

Buyer Members	Governor (Chair) Regional Head of ESW/Regional Head of Learning and Skills Head of ESW Head of Reducing Reoffending Activities Manager Industries Manager Neurodiversity Support Manager Others as required including Quality Manager, New Futures Network Broker
Supplier Members	Project Managers
Supplier Reporting Requirements	to be circulated prior to meeting, 5 Working Days before, and discussed by exception.



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	Creation and adherence to the Quality Calendar. And any other reports if and when required.
Start Date	Services Commencement Date
Frequency	Monthly
Location	TBA

Schedule 14 (Business Continuity and Disaster Recovery)

1 Definition

1.1 In this Schedule 14, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3;
"Disaster Recovery System"	the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster;
"Insolvency Continuity Plan"	has the meaning given to it in Paragraph Error! Reference source not found. 2.2.4
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph Error! Reference source not found. ; and
"Supplier's Proposals"	has the meaning given to it in Paragraph Error! Reference source not found. .

2 BCDR Plan

2.1 Within 30 Working Days of the Effective Date the Supplier shall prepare and deliver to the Buyer for Approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 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, its Affiliates, Supplier Group Member and/or any Subcontractor); and

2.1.2 the recovery of the Services in the event of a Disaster ("**BCDR Plan**").



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- 2.2 The BCDR Plan shall be divided into four sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**");
 - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and
 - 2.2.4 Section 4 which shall relate to an Insolvency Event of the Supplier, Affiliates, and/or any Subcontractor (the "**Insolvency Continuity Plan**"); and
- 2.3 unless otherwise required by the Buyer in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6 of this Schedule.
- 2.4 Following receipt of the draft BCDR Plan from the Supplier, the Buyer shall review and comment on the BCDR Plan as soon as reasonably practicable and notify the Supplier in writing that it approves or rejects the BCDR Plan no later than 20 Working Days after the date on which the draft BCDR Plan was first delivered to the Buyer.
- 2.5 If the Buyer rejects the BCDR Plan, the Buyer shall inform the Supplier in writing of its reasons for its rejection and the Supplier shall revise the BCDR Plan (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 BCDR Plan for the Buyer's Approval within 20 Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph 2.4 and this Paragraph 2.5 shall apply again to any resubmitted BCDR Plan provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 If the Buyer rejects the BCDR Plan 2 times (not including the initial submission under Paragraph 2.1), in accordance with Paragraph 2.5 and/or the Supplier fails to submit an initial or subsequent draft BCDR Plan, this shall be a Default and the Buyer may terminate this Contract in accordance with Clause 14.4

3 Section 1 of the BCDR Plan - General Principles

- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any goods and/or services provided to the Buyer by a Related Supplier;



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- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity, disaster recovery and insolvency continuity where applicable;
- 3.1.4 detail how the BCDR Plan 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 Suppliers in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels (including but without limitation a form of instant messaging or electronic communication such as a live chat functionality, e-mail and phone) for both portable and desk top configurations, where required by the Buyer;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of likely frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Supplier;
 - (d) identification of risks arising from an Insolvency Event of the Supplier, any Supplier Group Member and/or any Subcontractor; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions.
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 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;



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- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as notified by the Buyer to inform decisions in support of the Buyer's business continuity plans.

3.2 The BCDR Plan shall be designed to ensure that:

- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- 3.2.2 the adverse impact of any Disaster, service failure, an Insolvency Event of the Supplier, Supplier Group Member and/or any Subcontractor, or disruption on the operations of the Buyer, is minimised as far as reasonably possible;
- 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- 3.2.4 it details a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR 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 and/or Related Third Parties/Related Suppliers.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Key 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 Section 2 of the BCDR Plan - Business Continuity

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Buyer expressly states otherwise in writing:

- 4.1.1 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
- 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of 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:



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- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
- 4.2.2 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**");
- 4.2.3 specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 clearly set out the conditions and/or circumstances in which the Business Continuity Plan is invoked.

5 Section 3 of the BCDR Plan - Disaster Recovery

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed 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 include the following:
 - 5.2.1 the technical design and build specification of the Disaster Recovery System;
 - 5.2.2 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) the process for conducting a business impact assessment to determine the acceptable length of time of non-availability;
 - (iv) such procedures and processes as are required to ensure compliance with ISO 22301:2019
 - (v) identification of all potential disaster scenarios;
 - (vi) risk analysis;



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- (vii) documentation of processes and procedures;
- (viii) hardware configuration details;
- (ix) network planning including details of all relevant data networks and communication links;
- (x) invocation rules;
- (xi) Service recovery procedures; and
- (xii) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of the Services.

5.2.3 any applicable Key Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

5.2.4 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;

5.2.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

5.2.6 testing and management arrangements.

6 Section 4 of the BCDR Plan – Insolvency Continuity Plan

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 and/or any Key Subcontractor with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

6.2.1 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 Supplier Staff, Key Staff, Supplier Group Member personnel and/or Key Subcontractor;

6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Supplier Group Members and Key Subcontractors where failure of those dependencies could reasonably have an adverse impact on the Services;



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- 6.2.3 plans to manage and mitigate identified risks;
- 6.2.4 details of the roles and responsibilities of the Supplier, Supplier Group Members, and/or Key Subcontractors to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- 6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Supplier Group Members, and Key Subcontractors); and
- 6.2.6 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 BCDR Plan

- 7.1 The Supplier shall review and update the BCDR Plan (and the risk analysis on which it is based):
 - 7.1.1 at its own cost on a regular basis and as a minimum once every 6Months;
 - 7.1.2 at its own cost within 3 Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 9;
 - 7.1.3 within 14days of a Financial Distress Event;
 - 7.1.4 within 30days of a Change of Control;
 - 7.1.5 within 10 Working Days of completion of an Audit; and
 - 7.1.6 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraph 7.1.1 and 7.1.4) of this Schedule) 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 reasonable 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 properly incur above any estimate without the Buyer's Approval.
- 7.2 Each review of the BCDR Plan pursuant to Paragraph 7 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess its 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 BCDR Plan or the last review of the BCDR 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



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BCDR Plan or if no such period is required, within such period as the Buyer shall reasonably require. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

7.3 The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out:

7.3.1 the findings of the review;

7.3.2 any changes in the risk profile associated with the Services; and

7.3.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent 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, Related Third Parties and/or Related Suppliers.

7.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within 20 Working Days of its submission, then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

7.5 The Supplier shall as soon as is reasonably practicable after receiving Approval of the Supplier's Proposals 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 BCDR Plan

8.1 The Supplier shall test the BCDR Plan:

8.1.1 regularly and in any event not less than once in every Contract Year;

8.1.2 where in the opinion of the Buyer there has been a major reconfiguration of the Services;

8.1.3 on the occurrence of any event which may increase the likelihood of the need to implement; and

8.1.4 at any time where the Buyer considers it necessary (acting in its sole discretion) in relation to some or all aspects of the BCDR Plan.

8.2 If the Buyer requires an additional test of the BCDR 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 BCDR Plan. The Supplier's costs of



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the additional test shall be borne by the Buyer unless the BCDR 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 BCDR Plan in full consultation with and under the supervision of the Buyer (or its nominee) 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.
- 8.4 The Supplier shall ensure that any use by it or any Subcontractor 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:
 - 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 8.5.3 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 BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.
- 8.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR 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 BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Buyer.

9 Invocation of the BCDR Plan

- 9.1 In the event of a loss of any critical part of the Services or in the event of a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances, the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.
- 9.2 The Insolvency Continuity Plan element of the BCDR Plan, including any linked elements in other parts of the BCDR Plan, shall be invoked by the Supplier:



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- 9.2.1 where an Insolvency Event of a Key Subcontractor and/or Affiliate of the Supplier and/or Supplier Group Member could reasonably be expected to adversely affect delivery of the Services and/or
- 9.2.2 where there is an Insolvency Event of the Supplier, and the insolvency arrangements enable the Supplier to invoke the plan.

10 Force Majeure

The Supplier shall not be entitled to relief under Clause 24 if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.



Schedule 16 (Security)

1 Definitions

In this Schedule 16, the following words have the following meanings and supplement the defined Contract Periods in Contract Period Schedule 1 (Definitions).

2 General

- 2.1 This Schedule 16 sets out the obligations of the Parties in relation to information assurance and cyber security, including those which the Supplier must comply with in delivering the Services under the Contract. Schedule 16Annex 1 to this Schedule 7 sets out the additional security requirements which will apply if at any time a situation arises where the Supplier or its supply chain holds any Government Data on Supplier System and in which case Clause 18 and Schedule 20 shall also apply.
- 2.2 The Parties shall each appoint and/or identify a board level individual or equivalent who has overall responsibility for information assurance and cyber security, including personnel security and information risk. The provisions of Clause 7 and Schedule 30 apply to each individual appointed by the Supplier who fulfils the role of (or equivalent to) the Chief Security Officer, Chief Information Officer, Chief Technical Officer or who is identified as Key Staff. Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.
- 2.3 The Supplier shall act in accordance with Good Industry Practice in the day-to-day operation of any system which is used for the holding, storage, transferring or processing of Information Assets and/or the storage, processing, transferring or management of Government Data and/or that could directly or indirectly affect Information Assets and/or Government Data and shall ensure that the same remains under the effective control of the Supplier at all times.
- 2.4 The Supplier acknowledges that a compromise of Information Assets and/or Government Data represents an unacceptable risk to the Buyer requiring immediate communication and co-operation between the Parties. The Parties acknowledge that the purpose of the ISMS and Information Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
- 2.5 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Buyer.

3 Security Risks and Breaches

- 3.1 The Supplier shall use its reasonable endeavours to prevent any Breach of Security for any reason, including as a result of malicious, accidental or inadvertent behaviour.



- 3.2 Upon becoming aware of any Breach of Security or attempted Breach of Security, the Supplier shall:
- 3.2.1 immediately notify the Buyer in accordance with the agreed security incident management process as defined by the ISMS and without prejudice to the security incident management process, take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) that are necessary to:
 - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Government Data and/or Assets and/or ISMS to the extent that this is within the Supplier's control;
 - (c) apply a tested mitigation against a Breach of Security or attempted Breach of Security; and
 - 3.2.2 prevent a further Breach of Security or any potential or attempted Breach of Security in the future resulting from the same root cause failure. provide to the Buyer and/or the NCSC (or the Computer Emergency Response Team for UK Government ("**GovCertUK**") or equivalent any data that is requested relating to the Breach of Security or attempted Breach of Security within 2 Working Days of such request; and
 - 3.2.3 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 (using the reporting mechanism defined by the ISMS), including a root cause analysis if required by the Buyer and the Supplier recognises that the Buyer may report significant actual or potential losses of Personal Data to the Information Commissioner or equivalent and to the Cabinet Office.

4 Vulnerabilities and Fixing Them

- 4.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Buyer's information.
- 4.2 The severity of threat 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 ISMS and using the appropriate vulnerability scoring systems including:



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- 4.2.1 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 <http://nvd.nist.gov/cvss.cfm>); and
 - 4.2.2 Microsoft's "Security Bulletin Severity Rating System" ratings "Critical", "Important", and the two remaining levels ("Moderate" and "Low") respectively.
- 4.3 The Supplier shall procure and ensure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as "Critical" within 2 days of release, "Important" within 30 days of release and all "Other" within 60 Working Days of release, except where:
 - 4.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
 - 4.3.2 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 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 4.3.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 4.4 The Specification and Implementation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the "n-1 version") throughout the Contract Period unless:
 - 4.4.1 where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or
 - 4.4.2 is agreed with the Buyer in writing.
- 4.5 The Supplier shall:
 - 4.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Crown Body;



- 4.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 4.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;
 - 4.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 8;
 - 4.5.5 from the date specified in the Information Security Management Plan provide a report to the Buyer within 5 Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 4.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
 - 4.5.7 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 ICT Environment); and
 - 4.5.8 inform the Buyer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.
- 4.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 4.5, the Supplier shall immediately notify the Buyer.
- 4.7 A failure to comply with Paragraph 4.3 shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.

5 Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
- 5.1.1 All users and administrations of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 All persons who access any 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, including by the Core Education Providers and CIAG Providers, and shall make such record available to the Buyer on request.
- 5.4 The Supplier shall identify and document all non-human privileged accounts that the COTS software uses to run any part of the application, automated services, and background processes.

6 Physical Media

- 6.1 The Supplier shall ensure that all:
 - 6.1.1 physical media holding OFFICIAL information is handled in accordance with the Information Security Policy Framework and NCSC standards and guidance or equivalent; and
 - 6.1.2 ensure that Information Assets and Government Data held on paper are:
 - (a) kept secure at all times, locked away when not in use on the premises on which they are held and secured and are segregated if the Supplier is co-locating with the Buyer; and
 - (b) only transferred by an approved secure form of transfer with confirmation of receipt obtained.

7 Sub-Contracts

The Supplier shall ensure that all Sub-Contracts with Sub-Suppliers who have access to Information Assets and/or Government Data contain equivalent provisions in relation to information assurance and security that are no less onerous than those imposed on the Supplier under the Contract.

8 Information Security Management System (ISMS)

- 8.1 The Supplier shall develop and submit to the Buyer, within 20 Working Days after the Effective Date, an ISMS for the purposes of this Contract and shall comply with the requirements of this Schedule.
- 8.2 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 8.3 The Buyer acknowledges that:



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8.3.1 If the Buyer has not stipulated that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and

8.3.2 Where the Buyer has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Buyer's Approval.

8.4 The ISMS shall:

8.4.1 if the Buyer has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract;

8.4.2 meet the relevant standards in ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC27002;

8.4.3 at all times provide a level of security which:

- (a) is in accordance with the Law and this Contract;
- (b) complies with the Baseline Security Requirements;
- (c) as a minimum demonstrates Good Industry Practice;
- (d) where specified by a Buyer, complies with the Security Policy and the ICT Policy copies of which are to be provided by the Buyer;
- (e) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>)
- (f) takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.cpni.gov.uk>)
- (g) complies with HMG Information Assurance Maturity Model and Assurance Framework (<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>)
- (h) complies with the 14 Cloud Security Principles (<https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles>). The Supplier must document how the ISMS complies with these principles, and provide this documentation upon request by the Buyer;



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- (i) meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;
- (j) addresses issues of incompatibility with the Supplier's own organisational security policies; and
- (k) complies with ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC27002;

8.4.4 Document the security incident management processes and incident response plans;

8.4.5 Document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and

8.4.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Security Management Plan).

8.5 Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 8.4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

8.6 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 8.4, the Supplier shall immediately notify the Buyer Authorised Representative of such inconsistency and the Buyer Authorised Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

8.7 If the bespoke ISMS submitted to the Buyer pursuant to Paragraph 8.3.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph 8 may be unreasonably withheld or delayed. However any failure to



approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 8.4 to 8.6 shall be deemed to be reasonable.

- 8.8 Approval by the Buyer of the ISMS pursuant to Paragraph 8.7 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

9 Security Management Plan

- 9.1 Within twenty (20) Working Days after the Effective Date, the Supplier shall prepare and submit to the Buyer for Approval in accordance with Paragraph 9 fully developed, complete and up-to-date Information Security Management Plan which shall comply with the requirements of Paragraph 9.2.

- 9.2 The Information Security Management Plan shall:

- 9.2.1 be based on the initial Information Security Management Plan set out in Annex 2 (Security Management Plan);
- 9.2.2 comply with the Baseline Security Requirements and the Security Policy;
- 9.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- 9.2.4 detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 9.2.5 unless otherwise specified by the Buyer in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 9.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 8.4);



- 9.2.7 demonstrate that the Supplier's approach to delivery of the Deliverables has minimised the Buyer and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, "platform as a service" offering from the G-Cloud catalogue);
 - 9.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
 - 9.2.9 set out the scope of the Buyer System that is under the control of the Supplier;
 - 9.2.10 be structured in accordance with ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 9.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
- 9.3 If the Information Security Management Plan submitted to the Buyer pursuant to Paragraph 9.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Information Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not Approve the Information Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However, any failure to approve the Information Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 9.2 shall be deemed to be reasonable.
- 9.4 Approval by the Buyer of the Information Security Management Plan pursuant to Paragraph 9.3 or of any change or amendment to the Information Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

10 Amendment of the ISMS and Security Management Plan

- 10.1 The ISMS and Information Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
 - 10.1.1 emerging changes in Good Industry Practice;



- 10.1.2 any change or proposed change to the Supplier System, the Deliverables and/or associated processes;
 - 10.1.3 any new perceived or changed security threats;
 - 10.1.4 where required in accordance with Paragraph 2.5, any changes to the Security Policy and/or the ICT Policy;
 - 10.1.5 any new perceived or changed security threats; and
 - 10.1.6 any reasonable change in requirement requested by the Buyer.
- 10.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Information Security Management Plan at no additional cost to the Buyer. The results of the review shall include:
- 10.2.1 suggested improvements to the effectiveness of the ISMS;
 - 10.2.2 updates to the risk assessments;
 - 10.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
 - 10.2.4 suggested improvements in measuring the effectiveness of controls.
- 10.3 Subject to Paragraph 10.4, any change which the Supplier proposes to make to the ISMS or Information Security Management Plan (as a result of a review carried out pursuant to Paragraph 10.1, a Buyer request, a change to Schedule 16Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Buyer.
- 10.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the ISMS or Information Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

11 Security Testing

- 11.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Buyer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to



deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 11.2 The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test.
- 11.3 Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test.
- 11.4 Where any Security Test carried out pursuant to Paragraphs 11.2 or 11.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Information Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Information Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Information Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Schedule 16 Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Information Security Management Plan shall be at no cost to the Buyer.
- 11.5 If any repeat Security Test carried out pursuant to Paragraph 11.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a Material Default of this Contract.

12 Complying with the ISMS

- 12.1 The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or the Security Policy where such compliance is required..
- 12.2 If, on the basis of evidence provided by such security audits, it is the Buyer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or, where relevant, the Security Policy are



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not being achieved by the Supplier, then the Buyer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Buyer shall have the right to obtain an independent audit against these standards in whole or in part.

- 12.3 If, as a result of any such independent audit as described in Paragraph 12.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Buyer in obtaining such audit.



Annex 1: Additional Security Requirements

1 Security Classifications and Controls

- 1.1 The Supplier shall, unless otherwise Approved by the Buyer in writing, only have access to and handle Information Assets and Government Data that are classified under the Government Security Classifications Scheme as OFFICIAL.
- 1.2 There may be a specific requirement for the Supplier in some instances on a limited 'need to know basis' to have access to and handle Information Assets and Government Data that are classified as 'OFFICIAL-SENSITIVE'.
- 1.3 The Supplier shall apply the minimum security controls required for OFFICIAL information, OFFICIAL-SENSITIVE information and SECRET or TOP SECRET (as applicable) as described in Cabinet Office policy and guidance, currently at: <https://www.gov.uk/government/publications/government-security-classifications>. Where information 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. Where the Government Data is SECRET or TOP SECRET, the Supplier shall only process Government Data where it has notified the Buyer prior to receipt of such Government Data and the Supplier shall implement 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.
- 1.4 The Supplier shall be able to demonstrate to the Buyer and any assurer that it has taken into account the baseline security "Controls" required for all classifications of Government Data in designing and implementing the security controls in the Supplier System, which shall be subject to assurance to Government standards.
- 1.5 Additional controls may be required by the Buyer and any assurer where there are aspects of data aggregation.

2 End User Devices

- 2.1 The right to transfer Government Data to a remote device should be carefully considered and strictly limited to ensure that it is only provided where absolutely necessary and shall be subject to monitoring by the Supplier and Buyer.
- 2.2 The Supplier must manage, and must ensure that all Subcontractors manage, all end-user devices used by the Supplier on which Government Data is Processed in accordance with the following requirements:
 - 2.2.1 The operating system and any applications that Process or have access to Government Data must be in current support by the vendor;
 - 2.2.2 Users must authenticate before gaining access;



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- 2.2.3 all Government Data (whether in-flight or at rest) must be encrypted using an encryption tool agreed to by the Buyer;
- 2.2.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
- 2.2.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Government Data;
- 2.2.6 the Supplier or Subcontractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Government Data on the device and prevent any user or group of users from accessing the device;
- 2.2.7 all end-user devices are within the scope of any current Cyber Essentials [Plus] certification held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services;
- 2.2.8 all end-user devices meet the FIPS 140-3 standard or equivalent with Level 1 Security and Level 2 Security;
- 2.3 The Supplier must comply, and ensure that all Subcontractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Contract.

3 Data Storage, Processing, Management, Transfer and Destruction

- 3.1 The Parties recognise the need for Government Data to be safeguarded and for compliance with the UK Data Protection Legislation. To that end, the Supplier shall inform the Buyer of the location within the United Kingdom where Government Data is stored, processed and managed. The import and export of Government Data from the Supplier System must be strictly controlled and recorded.
- 3.2 The Supplier shall inform the Buyer of any changes to the location within the United Kingdom where Government Data is stored, processed and managed and shall not transmit, store, process or manage Government Data outside of the United Kingdom without Approval from the Buyer.
- 3.3 The Supplier shall ensure that the Supplier System provides internal processing controls between security domains to prevent the unauthorised high domain exporting of Government Data to the low domain if there is a requirement to pass data between different security domains.
- 3.4 The Supplier shall ensure that any electronic transfer of Government Data:



- 3.4.1 protects the confidentiality of the Buyer during transfer through encryption suitable for the impact level of the data; this must be a minimum of Transport Layer Security (TLS) 1.2 or higher.
- 3.4.2 maintains the integrity of the Government Data during both transfer and loading into the receiving system through suitable technical controls for the impact level of the data; and
- 3.4.3 prevents the repudiation of receipt through accounting and auditing.

3.5 The Supplier shall:

- 3.5.1 protect Government Data, including Personal Data, whose release or loss could cause harm or distress to individuals and ensure that this is handled as if it were confidential while it is stored and/or processed;
- 3.5.2 ensure that all OFFICIAL-SENSITIVE information, including Personal Data is encrypted in transit and when at rest when stored away from the Supplier's controlled environment;
- 3.5.3 on demand, provide the Buyer with all Government Data in an agreed open format;
- 3.5.4 have documented processes to guarantee availability of Government Data if it ceases to trade;
- 3.5.5 securely destroy all media that has held Government Data at the end of life of that media in accordance with any requirements in the Contract and, in the absence of any such requirements, in accordance with Good Industry Practice;
- 3.5.6 securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer;
- 3.5.7 ensure that all material used for storage of Confidential Information is subject to controlled disposal and the Supplier shall:
 - (a) destroy paper records containing Personal Data by incineration, pulping or shredding so that reconstruction is unlikely; and
 - (b) dispose of electronic media that was used for the processing or storage of Personal Data through secure destruction, overwriting, erasure or degaussing for re-use to comply with NCSC Guidance.

4 Networking and ensuring secure communications

- 4.1 Any Government Data transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted using a product or system component which has been formally assured



through a certification process recognised by NCSC or equivalent or other compliant encrypted networking services or equivalent unless none are available in which case the Supplier shall agree the solution with the Buyer.

- 4.2 The Supplier shall ensure that the configuration and use of all networking equipment in relation to the provision of the Services, including equipment that is located in secure physical locations, shall be at least compliant with Good Industry Practice.

5 Security Architectures

- 5.1 When designing and configuring the ICT Environment (to the extent that this is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification> for all bespoke or complex components).
- 5.2 The Supplier shall provide to the Buyer and any assurer sufficient design documentation detailing the security architecture of the ICT Environment and data transfer mechanism to support the Buyer's and any assurer's assurance that this is appropriate, secure and compliant with the Buyer's requirements.
- 5.3 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of the ICT Environment used for the storage, processing and management of Government Data. Users should only be granted the minimum necessary permissions to access Information Assets and Government Data and must be automatically logged out of the Supplier System if an account or session is inactive for more than 15 minutes.

6 Digital Continuity

The Supplier shall ensure that each Information Asset is held in an appropriate format that is capable of being updated from time to time to enable the Information Asset to be retrieved, accessed, used and transferred to the Buyer, including in accordance with any information handling procedures set out in Information Security Policy Framework if applicable.

7 Identity, Authentication and Access Control

- 7.1 The Supplier shall operate a robust role-based access control regime, including network controls, to ensure all users and administrators of and those maintaining the ICT Environment are uniquely identified and authenticated when accessing or administering the ICT Environment to prevent unauthorised users from gaining access to Information Assets and/or Government Data. Applying the 'principle of least privilege', users and administrators and those responsible for maintenance shall be allowed access only to those parts of the ICT Environment they require. The Supplier shall retain an audit record of accesses and users and disclose this to the Buyer upon request.



8 Physical Media

8.1 The Supplier shall ensure that all:

- 8.1.1 OFFICIAL information is afforded physical protection from internal, external and environmental threats commensurate with the value to the Buyer of that information; and
- 8.1.2 physical components of the Supplier System are kept in secure accommodation which conforms to the Information Security Policy Framework and NCSC standards and guidance or equivalent.

9 Audit and Monitoring

9.1 The Supplier shall implement effective monitoring of its information assurance and security obligations in accordance with Government standards and where appropriate, in accordance with NCSC Guidance.

9.2 The Supplier shall collect audit records which relate to security events in the ICT Environment (where this is within the control of the Supplier), including those that would support the analysis of potential and actual compromises. To facilitate effective monitoring and forensic readiness, such Supplier audit records shall include:

- 9.2.1 logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent it is within the control of the Supplier). To the extent, the design of the ICT Environment allows, such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers;
- 9.2.2 regular reports and alerts giving details of access by users of the ICT Environment (to the extent that it is within the control of the Supplier) to enable the identification of changing access trends any unusual patterns of usage and/or accounts accessing higher than average amounts of Government Data; and
- 9.2.3 security events generated in the ICT Environment (to the extent it is within the control of the Supplier) including account logon and logoff events, start and end of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

9.3 The Parties shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

9.4 The Supplier shall retain audit records collected in compliance with Paragraph 9.1 for at least 12 Months.



Annex 2: Information Security Management Plan

The Supplier shall develop and submit to the Buyer, within 20 Working Days after the Effective Date, an Information Security Management Plan for the purposes of this Contract and shall comply with the requirements of this Schedule.



Schedule 18 (Supply Chain Visibility)

1 Definitions

In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Contracts Finder"		the Government's portal for public sector procurement opportunities;
"SME"		an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
"Supply Chain Information Report "		the document to be prepared by the Supplier in accordance with the Supply Chain Information Report Template at Schedule 18Annex 1 of this Schedule 18; and
"Unconnected contract"	Sub-	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017
"Unconnected contractor"	Sub-	any third party with whom the Supplier enters into an Unconnected Sub-contract

2 Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The Supplier shall:

- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
- 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
- 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;



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- 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
- 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligations on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Effective Date.
- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

3 Visibility of Supply Chain Spend

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
 - 3.1.1 the total contract revenue received directly on the Contract;
 - 3.1.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
 - 3.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1.1 – 3.1.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version. The Buyer agrees to give at least 30 days’ notice in writing of any such change and shall specify the date from which it must be used.
- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

4 Visibility of Payment Practice



- 4.1 If the Contract has at the Effective Date an anticipated value in excess of £5 million per annum (excluding VAT) averaged over the Contract Period and without prejudice to Clause 4.6 and Clause 8.2.1(b)(ii), the Supplier shall:
- 4.1.1 pay any sums which are due from it to any Subcontractor or Unconnected Subcontractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) the date that falls 60 days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
 - 4.1.2 include within the Supply Chain Information Report a summary of its compliance with this Paragraph 4.4, such data to be certified every 6 Months by a director of the Supplier as being accurate and not misleading.
- 4.2 If any Supply Chain Information Report shows that in either of the last two 6 Month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Subcontractor invoices (or other notice of an amount for payment) within 60 days of receipt, the Supplier shall provide to the Buyer within 15 Working Days of submission of the latest Supply Chain Information Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include:
- 4.2.1 identification of the primary causes of failure to pay 95% or more of all Subcontractor or Unconnected Subcontractor invoices (or other notice of an amount for payment) within 60 days of receipt;
 - 4.2.2 actions to address each of the causes set out in Sub-Paragraph 4.2.1; and
 - 4.2.3 mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 4.3 Where the Supplier fails to pay any sums due to any Subcontractor or Unconnected Subcontractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 4.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Subcontractors or Unconnected Subcontractors which is required to be submitted to the Buyer as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 4.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or more of its Unconnected Subcontractors within 60 days of the day on which the Supplier receives an invoice or otherwise has notice



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of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Annex 1 - Supply Chain Information Report Template – N/A

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

Schedule 19 (Cyber Essentials Scheme)

1. Definitions

- 1.1 In this Schedule the following words have the following meanings and supplement Schedule 1 (Definitions):

"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet-based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

2. What Certification do you need

- 2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate prior to contract award the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it is prohibited from commencing the provision of Deliverables until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data the Supplier shall deliver to the Buyer evidence of:
 - 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
 - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 If the Supplier does not comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer may terminate the Contract for Material Default and the consequences of termination in Clause 14.5.1 shall apply.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Scheme Data require the Subcontractor to provide a valid Cyber Essentials Certificate, at the equivalent level to that held by the Supplier. The Supplier cannot require the Subcontractor to commence the provision of Deliverables under the Sub-Contract until the Subcontractor has evidenced to the Supplier that it holds a valid Cyber Essentials Certificate.
- 2.6 The Supplier must manage, and must ensure that all Subcontractors manage, all end-user devices used by the Supplier and the Subcontractor on which Cyber Essentials Scheme Data is processed by ensuring those devices are within the scope of the current Cyber Essentials Certificates held by the Supplier and the Subcontractor, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Deliverables.
- 2.7 This Schedule 19 shall survive termination or expiry of the Contract.



Schedule 20 (Processing Data)

1 Status of the Controller

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:

1.1.1 "Controller" in respect of the other Party who is "Processor";

1.1.2 "Processor" in respect of the other Party who is "Controller";

1.1.3 "Independent Controller" of the Personal Data where the other Party is also "Controller",

in respect of certain Personal Data under a Contract and shall specify in Schedule 20Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

2 Where one Party is Controller and the other Party its Processor

2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 20Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.

2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;

2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;

2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:



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- 2.4.1 process that Personal Data only in accordance with Schedule 20Annex 1 (Processing Personal Data) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
- 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.
- 2.4.3 ensure that:
 - (a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Schedule 20Annex 1 (Processing Personal Data));
 - (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18, 19 and 20 of the Core Terms;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.4.4 not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:



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- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "**IDTA**"); or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.

2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.



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- 2.5 Subject to Paragraph 2.6, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.5.2 receives a request to rectify, block or erase any Personal Data;
 - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
 - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 2.5.6 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 includes the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.



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- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the Processing is not occasional;
 - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Subprocessor to Process any Personal Data related to this Contract, the Processor must:
- 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
 - 2.11.2 obtain the written consent of the Controller;
 - 2.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
 - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13 The Parties shall take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.



Annex 1 - Processing Personal Data

- 1 This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex is with the Buyer at its absolute discretion.

The contact details of the Buyer's Data Protection Officer are: **REDACTED** Under Section 40 of the FOIA: Personal Information.

The contact details of the Supplier's Data Protection Officer are: **REDACTED** Under Section 40 of the FOIA: Personal Information.

- 1.1 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

- 1.2 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	The Buyer is Controller and the Supplier is Processor The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller, and the Supplier is the Processor of the Personal Data recorded below. Scope All Personal Data which is uploaded and/or submitted to the Services by the Buyer or as otherwise provided to the Supplier in connection with the Buyer's use of the Services (including Implementation Plan) pursuant to this Contract. Purpose and Means The Supplier will only Process the Personal Data on the documented instructions of the Buyer; such instructions are set out in this Contract (specifically this Schedule). For clarity, all Processing detailed within this Schedule will include Processing conducted by: • The Supplier directly • The Supplier's Subcontractors • The Supplier's Subcontractors' third-party providers (as set out within Annex 1b). For clarity, the Supplier's Subcontractors and the



Description	Details
	additional third-party providers set out at Annex 1b, will take the position as Sub processors of Personal Data.
Subject matter of the Processing	For the supply of Assessment and Learning (bksb) SaaS software which is compliant with the Buyer information security standards in order to provide screening and assessment capabilities for the Buyer for Maths, English and digital skills.
Duration of the Processing	The Term of the Contract (and any agreed Extension Periods). Extension Periods).
Nature and purposes of the Processing	Nature of processing: collection, recording, organising, storage, retrieval, consultation, restriction, erasure or destruction after retention period, of Personal Data processed in connection with the Contract. Purpose: The processing of Personal Data in so far as is necessary to allow the Contractor to fulfil its obligations under the Contract. In particular, this includes processing activities necessary to provide screening and assessment services to prisoners, and to allow for screening and assessment data to be assigned to each specific prisoner, which in turn will better support the individual support received. Such Personal Data is collected as a minimum when an individual enters the prison system.
Type of Personal Data being Processed	Personal Data may include, but is not limited to: • First Name • Surname • Email address • Telephone number • Prisoner identifier number • Staff number • Gender • Ethnic origin/nationality • Results of screening and assessments



Description	Details
	• Health and disability information (for example, any additional learning needs or reasonable adjustments) • Criminal convictions information (for example, the fact that the individual has a criminal conviction)
Categories of Data Subject	All persons who may have an agreement, contract or other connection with the Buyer. This may include, but is not limited to: • employees, contracted personnel, temporary workers, employees of customers and suppliers • clients and customers of the Buyer • prisoners/learners • Prisoners • Prison Staff • Core Education Provider personnel. • CIAG Provider personnel • Authority Personnel
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under law to preserve that type of data	Data to be made available by the Supplier to the Buyer in a machine-readable format (at no cost to the Buyer's cost) upon receipt of a documented request from the Buyer, such request to be received within thirty (30) days of expiry or termination of the Contract. Thereafter, all data will be deleted within ninety (90) days of the confirmation of receipt of data extract by the Buyer, unless otherwise agreed in writing between the Parties or to the extent it is required to be retained or deleted under Data Protection Legislation
Locations at which the Supplier and/or its Sub-contractors process Personal Data under the Contract and international transfers and legal gateway	REDACTED Under Section 43 of the FOIA: Commercial Interests
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal	REDACTED Under Section 43 of the FOIA: Commercial Interests



Description	Details
Data processed under the Contract against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	



Schedule 21 (Variation Form)

This form is to be used in order to change the Contract in accordance with Clause 28.

Contract Details		
This variation is between:	[insert name of Buyer] And [insert name of Supplier]	
Contract name:	[insert name of contract to be changed]	
Contract reference number:	[insert contract reference number]	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: Buyer/Supplier]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]	
Outcome of Variation		
Contract variation:	The Contract is varied as follows: [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]



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- 1 This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer.
- 2 Words and expressions in this Variation shall have the meanings given to them in the Contract.
- 3 The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.



Contract for the Provision of the Screening & Assessment Tool for Maths, English & Digital Skills

Signed by an authorised signatory for and on behalf of the Buyer

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....



Schedule 22 (Insurance Requirements)

1 The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the Required Insurances. The Supplier shall ensure that each of the Required Insurances is effective no later than the Effective Date in respect of those Required Insurances set out in the Schedule 10345021Part Annex and those required by applicable Law; and
- 1.2 The Required Insurances shall be:
 - 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Schedule 10345021Part Annex Part C which shall be maintained for at least 6 years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2 How to manage the insurance

- 2.1 Without limiting the other provisions of the Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Required Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Required Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and



other evidence of placing cover representing any of the Required Insurances to which it is a party.

3 What happens if you aren't insured

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Required Insurances in full force and effect, the Buyer may (but shall not be obliged) following written notice to the Supplier purchase the relevant Required Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 Evidence of insurance you must provide

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Buyer, that the Required Insurances are in force and effect and meet in full the requirements of this Schedule 22.

5 Making sure you are insured to the required amount

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in this Schedule 22.
- 5.2 Where the Supplier intends to claim under any of the Required Insurances for any matters that are not related to the Deliverables and/or the Contract, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule 22, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule 22.

6 Cancelled Insurance

- 6.1 The Supplier shall notify the Buyer in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give



notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7 Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Required Insurances. If the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within 20 Working Days after any insurance claim in excess of £50,000 relating to or arising out of the provision of the Deliverables or the Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Required Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier is not entitled to recover from the Buyer any sum paid by way of excess or deductible under the Required Insurances whether under the terms of the Contract or otherwise.



Annex: Required Insurances

Part A: Third Party Public and Products Liability Insurance

1 Insured

The Supplier

2 Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Deliverables and in connection with the Contract.

3 Limit of indemnity

3.1 Not less than £10 million in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £10 million in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

4 Territorial limits

United Kingdom

5 Period of insurance

For the Contract Period and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

6 Cover features and extensions

Indemnity to principals clause under which the Buyer is indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.



7 Principal exclusions

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

Part B: Professional Indemnity Insurance

1.1 Insured

Supplier

1.2 Interest

To indemnify the Insured for all sums which the insured shall become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the insured during the period of insurance required in Paragraph 4.5 (Period of Insurance) below by reason of any act, error and/or omission arising from or in connection with this Contract and the provision of the Services.

1.3 Limit of indemnity

Not less than:

- 1.3.1 five million pounds (£5,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance; and
- 1.3.2 ten million pounds (£10,000,000) in respect of any one claim in relation to Government Data including Personal Data.



1.4 Territorial limits

United Kingdom.

1.5 Period of insurance

From the Effective Date for the duration of this Contract and a period of 6 years following the expiry or termination of this Contract whichever occurs earlier.

1.6 Cover features & extensions

1.6.1 Loss of documents, Authority Data and computer records extension

1.6.2 cover the full replacement value of damage to, alternation of, loss of or destruction of intangible property (including but not limited to information or data) that is in the care, custody or control of the Supplier;

1.6.3 Data Protection Act, to include terms so as to cover a breach of Data Protection Legislation, Personal Data Breach, Data Loss Event as described in Schedule 20 (Processing Data); and

1.6.4 In respect of any claims made policy wording retroactive cover from the date of this Contract or retroactive date no later than the date of this Contract.

1.7 Principal exclusions

1.7.1 War and related perils.

1.7.2 Nuclear/radioactive risks.

Part C: United Kingdom Compulsory Insurances

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

Part D: Additional Insurances

Property Damage Insurance / Goods in Transit Insurance	Where the Buyer requirement necessitates primary perils insurance for relevant physical property (e.g. Buyer physical property in the care, custody and control of the Supplier in
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	delivering the Contract), such cover shall have a limit of indemnity of not less than ten million pounds (£10,000,000) in respect of any one claim.
Cyber Liability Insurance	Where the Buyer requirement includes specific cyber risk exposures.



Schedule 24 (Financial Difficulties)

1 Definitions

- 1.1 In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Applicable Financial Indicators"	the financial indicators from Part C of Part BAnnex 2 which are to apply to the Monitored Suppliers as set out in Part B of Part CAnnex 3 of this Schedule;
"Credit Rating Threshold"	the minimum credit rating level for each entity in the FDE Group as set out in Schedule 24Part A of Part BAnnex 2 of this Schedule;
"Credit Reference Agencies"	the credit reference agencies listed in Part B of Schedule 24Annex 1 of this Schedule;
"Credit Score Notification Trigger"	the minimum size of any downgrade in a credit score, set out in Part B of Part BAnnex 2 of this Schedule, which triggers a Credit Score Notification Trigger Event;
"Credit Score Notification Trigger Event"	any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;
"Credit Score Threshold"	the minimum credit score level for each entity in the FDE Group as set out in Part B of Part BAnnex 2 of this Schedule;
"Financial Distress Service Continuity Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract if a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with the Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
"Financial Indicators"	in respect of the Supplier, Key Sub-contractors, means each of the financial indicators set out at Part C of Part BAnnex 2 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;



"Financial Target Thresholds"	the target thresholds for each of the Financial Indicators set out at Part C of Part BAnnex 2 of this Schedule;
"Primary Metric"	Means the credit score of an FDE Group entity
"Monitored Supplier"	those entities specified in Part B of Part CAnnex 3 of this Schedule; and
"Rating Agencies"	the rating agencies listed in Schedule 24Part A of Schedule 24Annex 1 of this Schedule.

2 When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.

3 Credit Ratings

- 3.1 The Supplier warrants and represents to the Buyer that as at the Effective Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Schedule 24Part A of Part BAnnex 2.
- 3.2 The Supplier shall:
- 3.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and
 - 3.2.2 promptly (and in any event within 5 Working Days) 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.
- 3.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

4 Credit Scores

- 4.1 The Supplier warrants and represents to the Buyer that as at the Effective Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Part BAnnex 2.
- 4.2 The Supplier shall:



- 4.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
 - 4.2.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within 5 Working Days).
- 4.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.

5 Financial Indicators

- 5.1 The Supplier shall 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 at Part C of Part BAnnex 2 (where specified) and in any event, on a regular basis and no less than once a year within 120 days of the accounting reference date
- 5.2 Subject to the calculation methodology set out at Annex 2, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: Standard Financial Ratios of Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021 (as amended, supplemented or replaced from time to time) which as at the Effective Date can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf

- 5.3 Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:
- 5.3.1 be a single report with separate sections for each of the FDE Group entities;
 - 5.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
 - 5.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; and
 - 5.3.4 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

5.3.5 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.

5.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:

5.4.1 a report submitted by the Supplier pursuant to Paragraph 5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any of the Financial Indicators set out in Part C of Part BAnnex 2;

5.4.2 a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 5.3; or

5.4.3 the Supplier does not deliver a report pursuant to Paragraph 5.3 in accordance with the applicable monitoring and reporting frequency.

6 What happens if there is a financial distress event

6.1 The Supplier shall 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.

6.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the 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 6.4 to 6.6.

6.3 If a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 6.4 without first giving the Supplier 10 Working Days to:

6.3.1 rectify such late or non-payment; or

6.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.



- 6.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
- 6.4.1 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) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance the Contract; and
 - 6.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:
 - (a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity 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);
 - (b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and
 - (c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.
- 6.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity 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 Service Continuity Plan, which shall be resubmitted to the Buyer within 5 Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:
- 6.5.1 Approved;
 - 6.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
 - 6.5.3 finally rejected by the Buyer.
- 6.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:



- 6.6.1 at least Monthly, review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance the Contract and delivery of the Deliverables in accordance with the Contract;
 - 6.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Buyer;
 - 6.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
 - 6.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 6.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

7 When the Buyer can terminate for financial distress

- 7.1 The Buyer may terminate the Contract for Material Default if:
- 7.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 6.1;
 - 7.1.2 the Supplier fails to comply with any part of Paragraph 6.4;
 - 7.1.3 subject to Paragraph 7.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
 - 7.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 6.5.2;
 - 7.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or
 - 7.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.6.4,

and the consequences of termination in Clause 14.5.1 shall apply.



- 7.2 A Material Default may only occur under Paragraph 7.1.3 after the expiry of the first 5 Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

8 What happens If your Primary Metric is still good

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

- 8.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and
- 8.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 6.4.2(c)).



Annex 1: Rating Agencies and Credit Reference Agencies and their standard rating system

Part A: Rating Agencies

Dun & Bradstreet

Equifax

Part B: Credit Reference Agencies

Dun & Bradstreet

Equifax

Or such other rating agency as may be agreed by the Authority.

Part C: Standard Rating System

Credit Rating Level 1: A

Credit Rating Level 2: A



Annex 2: Credit Ratings, Credit Scores and Financial Indicators

Part A: Credit Rating

Entity	Credit rating (long term)	Credit Rating Threshold
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests

Part B: Credit Score

Entity	Credit score	Credit Score Notification Trigger	Credit Score Threshold
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests
[Key Subcontractor]			
[Monitored Supplier]			

Part C: Financial Indicators



Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 5.1]
1 Net Interest Paid Cover	<i>Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid</i>	< 3.0 times	<i>Tested and reported yearly in arrears within ninety (90) days of each accounting reference date based upon figures for the twelve (12) Months ending on the relevant accounting reference date</i>
2 Acid Ratio	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities</i>	> 0.8 times	<i>Tested and reported yearly in arrears within ninety (90) days of each accounting reference date based upon figures for the twelve (12) Months ending on the relevant accounting reference date</i>
3 Net Asset value	<i>Net Asset Value = Net Assets</i>	> £0	<i>Tested and reported yearly in arrears within ninety (90) days of each accounting reference date based upon figures for the twelve (12) Months ending on the relevant accounting reference date</i>
4 Group Exposure Ratio	<i>Group Exposure / Gross Assets</i>	>50 %	<i>Tested and reported yearly in arrears within ninety (90) days of each accounting reference date based upon figures for the twelve (12) Months ending on the relevant accounting reference date</i>

Key¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.



Annex 3 – Additional FDE Group Members and Monitored Suppliers

Part A: Additional FDE Group Members

- 1 Guarantor;
- 2 Key-Subcontractors; and
- 3 Monitored Suppliers.

Part B: Monitored Suppliers

Entity Name	Company Number	Applicable Financial Indicators (these are the Financial Indicators from the table in Part C of Annex 2 which are to apply to the Monitored Suppliers)
		All four financial indicators



ANNEX 4 – CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. Terminology: The terms referred to in this Annex 4 are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 Net Interest Paid Cover	“Earnings Before Interest and Tax” = Operating profit “Net Interest Paid” = Interest paid – Interest received Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates. Interest received and interest paid should be shown on the face of the Cash Flow statement. Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.
2 Acid Ratio	All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.



Financial Indicator	Specific Methodology
3 Net Asset value	Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).
4 Group Exposure Ratio	"Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings "Gross Assets" = Fixed Assets + Current Assets Group Exposure: Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met. In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Gross Assets: Both Fixed assets and Current assets are shown on the face of the Balance Sheet.



Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Notifiable Default:	[Guidance: Explain the Notifiable Default with clear schedule and cause references as appropriate]	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer:		Date:
Supplier [Revised] Rectification Plan		
Cause of the Notifiable Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Notifiable Default:	[add effect]	
Steps to be taken to rectification:	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Notifiable Default	[X] Working Days	
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]



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Signed by the Supplier:		Date:	
Review of Rectification Plan Buyer			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	



Schedule 26 (Sustainability)

1 Definitions

In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Modern Slavery Assessment Tool"	means the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat
"PSED"	means the Public Sector Equality duty
"Supply Chain Map"	means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least: (a) the name, registered office and company registration number of each entity in the supply chain; (b) the function of each entity in the supply chain; and (c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain; and
"Waste Hierarchy"	means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: (a) Prevention; (b) Preparing for re-use; (c) Recycling; (d) Other Recovery; and (e) Disposal.
"Zero Hours Contract"	means as it relates to employees or workers and not those who are genuinely self-employed and undertaking work on a zero hours arrangement.



Part A

1 Public Sector Equality Duty

1.1 In addition to its legal obligations, where the Supplier is providing a Deliverable to which the PSED applies, the Supplier shall support the Buyer in fulfilling its PSED under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2 advance:

(a) equality of opportunity; and

(b) good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2 Employment Law

2.1 The Supplier must:

2.1.1 perform its obligations meeting the requirements of all applicable Law regarding employment;

2.1.2 ensure that all Supplier Staff are employed on the condition that they are permitted to work in the United Kingdom;

2.1.3 notify the Buyer immediately if an employee is not permitted to work in the United Kingdom;

2.1.4 ensure that all pay and benefits paid for a standard working week meet, at least, national legal standards in the country of employment;

2.1.5 provide all Supplier Staff with written and readily understandable information about their employment conditions in respect of pay before they enter employment and about their pay for the pay period concerned each time they are paid;

2.1.6 not make deductions from pay as a disciplinary measure; except where permitted by Law and the terms of their employment contract; and without express permission of the person concerned;



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- 2.1.7 record all disciplinary measures taken against Supplier Staff;
- 2.1.8 ensure that the working hours of Supplier Staff comply with the Law and any collective agreements;
- 2.1.9 the working hours of Supplier Staff, excluding overtime, are defined by contract, do not exceed 48 hours per week unless the individual has agreed in writing and that any such agreement is in accordance with the Law;
- 2.1.10 overtime is used responsibly, considering:
 - (a) the extent;
 - (b) the frequency; and
 - (c) the hours worked;
- 2.1.11 the total hours worked in any 7-day period do not exceed 60 hours, unless:
 - (a) it is allowed by Law;
 - (b) it is allowed by a collective agreement freely negotiated with an organisation representing a significant proportion of the workforce;
 - (c) appropriate safeguards are in place to protect the workers' health and safety; and
 - (d) the Supplier can demonstrate that exceptional circumstances apply such as during unexpected production peaks, accidents or emergencies;
- 2.1.12 all Supplier Staff are provided with at least:
 - (a) one day off in every 7-day period; or
 - (b) if allowed by Law, 2 days off in each 14-day period;
 - (c) require the Supplier to remove from performance of the Contract any Subcontractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - (d) immediately terminate the Contract and the consequences of termination set out in Clause 14.5.1 shall apply; and
- 2.1.13 shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to the Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in



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Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).

- 2.2 If the Supplier notifies the Buyer pursuant to Clause 3.1.11 it shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- 2.3 If the Supplier is in Default under Paragraph 3.1 the Buyer may by notice:
 - 2.3.1 require the Supplier to remove from performance of the Contract any Subcontractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - 2.3.2 immediately terminate the Contract and the consequences of termination set out in Clause 14.5.1 shall apply.

3 Environmental Requirements

- 3.1 The Supplier must perform its obligations meeting in all material respects the requirements of all Laws regarding the environment.
- 3.2 In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:
 - 3.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 3.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of the Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
 - 3.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of the Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 3.3 In circumstances that a permit, licence or exemption to carry or send waste generated under the Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 3.4 The Supplier shall maintain ISO 14001 or BS 8555 or an equivalent standard intended to manage its environmental responsibilities.



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- 3.5 The Supplier shall perform its obligations under the Contract in a way that supports the Buyer's achievement of the Greening Government Commitments, conserves energy, water, wood, paper and other resources, reduces waste, avoids the use of ozone depleting substances and minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 3.6 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 3.7 The Supplier shall comply with the Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

4 Supplier Code of Conduct

- 4.1 In February 2019, HM Government published its Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

5 Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within 14 days of such request.

Part B

1 Equality, Diversity and Inclusion – Further Requirements

- 1.1 In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity and inclusion requirements, to be provided to the Supplier by the Buyer.
- 1.2 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.



2 Environmental – Further Requirements

- 2.1 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Deliverables.
- 2.2 The Supplier shall ensure that any Deliverables are designed, sourced and delivered in a manner which is environmentally and socially responsible.
- 2.3 In delivering the Deliverables, the Supplier must comply with the Buyer's sustainability requirements, to be provided to the Supplier by the Buyer.
- 2.4 [In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer:
 - 2.4.1 avoid consumable single use items (including packaging) unless otherwise agreed with the Buyer, and unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Deliverables;
 - 2.4.2 demonstrate that the whole life cycle impacts (including end of use) associated with the Deliverables that extend beyond direct operations into that of the supply chain have been considered and reduced;
 - 2.4.3 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;
 - 2.4.4 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;
 - 2.4.5 enhance the natural environment and connecting communities with the environment; and
 - 2.4.6 achieve continuous improvement in environmental (and social) performance.

- 2.5 The Supplier shall inform the Buyer within one Working Day if a permit, licence or exemption to carry or send waste generated under the Contract is revoked.

3 Further Reporting Requirements

- 3.1 The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1 and 2 of this Part B above within 30 days of such request.



Schedule 27 (Key Subcontractors)

1 Restrictions on certain subcontractors

- 1.1 The Supplier may sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Subcontract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then it will be added to the Key Subcontractor section of the Award Form. The Buyer may reasonably withhold its consent to the appointment of a Key Subcontractor if it considers that:
 - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
 - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
 - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
 - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
 - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
 - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within 10 Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
 - 1.4.1 a copy of the proposed Key Sub-Contract; and



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1.4.2 any further information reasonably requested by the Buyer.

1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;

1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;

1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;

1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;

1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:

(a) the data protection requirements set out in Clause 18;

(b) the FOIA and other access request requirements set out in Clause 20;

(c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;

(d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and

(e) the conduct of audits set out in Clause 6;

1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 and 14.5;

1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and

1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step in on substantially the same terms as are set out in Clause 13.



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- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.



Schedule 30 (Key Supplier Staff)

1 Key Supplier Staff

- 1.1 Annex 1 lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("**Key Staff**").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
 - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 1.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
 - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 1.5.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least 3 Months' notice
 - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom they have replaced.



- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.



Annex 1 - Key Roles

1 Key Roles and Key Staff

The Supplier's management structure should include functions and Key Roles which cover the areas described in the table below. The exact structure, roles and organisation matters for the Supplier to determine.

Key Role	Name of Key Staff	Responsibilities/ Authorities	Description of the role	Minimum period during which they will be a member of Key Staff
Supplier's Authorised Representative	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.
Mobilisation Manager	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.
Chief Information Officer/Chief Security Officer/Chief Technical Officer	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.
Quality Assurance Lead	REDACTED Under Section 40 of the FOIA:	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.



Key Role	Name of Key Staff	Responsibilities/ Authorities	Description of the role	Minimum period during which they will be a member of Key Staff
	Personal Information.			
Collaboration Sponsor	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.	REDACTED Under Section 40 of the FOIA: Personal Information.



Schedule 31 (Exit Management)

1 Definitions

1.1 In this Schedule, the following words have the following meanings and supplement the defined terms in Schedule 1 (Definitions):

"Exclusive Assets"	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
"Exit Information"	has the meaning given to it in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule 31;
"Net Book Value"	the current net book value of the Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Buyer;
"Transferable Contracts"	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 provide the Deliverables or the Replacement Deliverables and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in Paragraph 8.2.1;



"Transferring Contracts" has the meaning given to it in Paragraph 8.2.3; and

"Virtual Library" the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 2.2.

2 Supplier must always be prepared for contract exit

2.1 The Supplier shall within 30 days of the Effective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 The Supplier shall within 30 days of the Implementation Services Commencement Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:

2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs (consistent with Annex 1 of Schedule 35 (Intellectual Property)) which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 or Schedule 24 and operating procedures through which the Supplier provides the Deliverables,

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in the Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.

2.3 The Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7.

2.4 The Supplier shall:

2.4.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and

2.4.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the



Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.5 Each Party shall appoint an Exit Manager within 3 Months of the Effective Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of the Contract.

3 Assisting re-competition for Deliverables

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require 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 (the "Exit Information").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within 5 Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

4 Exit Plan

- 4.1 The Supplier shall, within 3 Months of the Services Commencement Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 4.3 and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
- 4.2 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 the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:



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- 4.3.1 how the Exit Information is obtained;
- 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under the Contract;
- 4.3.3 the management structure to be employed during the Termination Assistance Period;
- 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
- 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Schedule 31Annex 1 are applicable);
- 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
- 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4) together with a capped estimate of such charges;
- 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
- 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documents relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and



4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (Charges). The Supplier may vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.

4.5 The Supplier shall:

4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:

- (a) every 6 months throughout the Contract Period;
- (b) no later than 20 Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
- (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than 10 Working Days after the date of the Termination Assistance Notice;
- (d) as soon as reasonably possible following, and in any event no later than 20 Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and

4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan.

4.7 A version of an Exit Plan agreed between the Parties shall not be superseded by any draft submitted by the Supplier.

5 Termination Assistance

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "Termination Assistance Notice") at least 4 Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, no later than one Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:



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- 5.1.1 the nature of the Termination Assistance required; and
- 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than 12 Months after the End Date.
- 5.2 The Buyer may extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
 - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date 18 Months after the End Date; and
 - 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than 20 Working Days' written notice upon the Supplier.
- 5.3 The Buyer may terminate its requirement for Termination Assistance by serving not less than 20 Working Days' written notice upon the Supplier.
- 5.4 If Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

6 Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
 - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under the Contract and, if required by the Buyer, provide the Termination Assistance;
 - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
 - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
 - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under the Contract;
 - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and



6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.

6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7 Obligations when the contract is terminated

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

7.2.1 cease to use the Government Data;

7.2.2 vacate any Buyer Premises;

7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to 12 Months after expiry or termination to:

(a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and

(b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables 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 such requests for access.

7.3 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 Assistance 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 Assistance or for statutory compliance purposes.

8 Assets, Sub-contracts and Software

8.1 Following notice of termination of the Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within 20 Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:

8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("Transferring Assets");

8.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets; and

(b) the Non-Exclusive Assets,

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

8.2.3 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 Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Deliverables and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.



- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 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 shall pass on payment for them.
- 8.5 Where 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:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence 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
 - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, 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.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 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 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

9 No charges



Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

10 Dividing the bills

All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 10.2 the Buyer or Replacement Supplier (as applicable) 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
- 10.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.



Annex 1: Scope of Termination Assistance

1 Scope of Termination Assistance

- 1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
- 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.2 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;
 - 1.1.3 providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;
 - 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;
 - 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
 - 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
 - 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - 1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;
 - 1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
 - 1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;



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- 1.1.11 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 provision of the Deliverables to the Buyer and/or the Replacement Supplier:
- (a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;
- 1.1.12 knowledge transfer services, including:
- (a) 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 at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
 - (b) 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 Deliverables;
 - (c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
 - (d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
 - (e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,



and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier will:

1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of the Contract; and

1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable 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 to the operations staff of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

1.4.1 copies of up-to-date procedures and operations manuals;

1.4.2 product information;

1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and

1.4.4 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,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

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:

1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:

(a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

(b) 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



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- 1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.



Schedule 32 (Prison Security)

- 1 The Buyer may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Buyer Premises:
 - 1.1 any member of the Supplier Staff; or
 - 1.2 any person employed or engaged by any member of the Supplier Staff
whose admission or continued presence would, in the Buyer's reasonable opinion, be undesirable.
- 2 The Buyer shall maintain the security of the Buyer Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institution Rules 2000 Part III and the Young Offender Institution (Amendment) Rules 2008, available to the Supplier on request.
- 3 The Buyer may search any persons or vehicles engaged or used by the Supplier at the Buyer Premises.
- 4 The Supplier shall:
 - 4.1 comply with all security requirements of the Buyer while on the Buyer Premises and ensure that all Supplier Staff comply with such requirements.
 - 4.2 ensure that all Supplier Staff who have access to the Buyer Premises or the Buyer System have been cleared in accordance with the Government's Baseline Personnel Security Standard.
 - 4.3 co-operate with any investigation relating to security carried out by the Buyer or on behalf of the Buyer and, at the Buyer's request:
 - 4.3.1 use reasonable endeavours to make available any Supplier Staff requested by the Buyer to attend an interview for the purpose of an investigation; and
 - 4.3.2 provide documents, records or other material in whatever form which the Buyer may reasonably request or which may be requested on the Buyer's behalf, for the purposes of an investigation.
 - 4.4 comply with PSI 10/2012; and
 - 4.5 at the Buyer's written request, at the Supplier's cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Buyer Premises, specifying the capacities in which



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they are concerned with the Contract and giving such other particulars as the Buyer may reasonably request.

- 5** If Supplier Staff are required to have a pass for admission to Buyer Premises which is a Prison, the Buyer shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any member of Supplier Staff who cannot produce a proper pass when required to do so by any member of the Buyer's personnel, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to a Prison or be required to leave a Prison if already there.
- 6** Supplier Staff shall promptly return any pass if at any time the Buyer so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Services. The Supplier shall promptly return all passes on expiry or termination of the Contract.
- 7** Supplier Staff attending a Prison may be subject to search at any time. Strip searches shall be carried out only on the Buyer's express authority under the same rules and conditions applying to the Buyer's personnel pursuant to Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005 and Rule 75 of Part IV of the Young Offender Institution Rules 2000 as amended by the Young Offender Institution (Amendment) Rules 2005.
- 8** Searches shall be conducted only on the Buyer's express authority under the same rules and conditions applying to the Buyer's personnel and/or visitors pursuant to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and the Searching Policy Framework.
- 9** Whilst at a Prison, Supplier Staff shall comply with all security measures implemented by the Buyer in respect of persons attending Prison. The Buyer shall provide copies of its written security procedures to Supplier Staff on request. The Supplier and all Supplier Staff are prohibited from taking any photographs at Prisons unless they have Approval and the Buyer's Authorised Representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.
- 10** The Buyer may search vehicles used by the Supplier or Supplier Staff at a Prison.
- 11** The Supplier and Supplier Staff shall co-operate with any investigation relating to security which is carried out by the Buyer or by any person who is responsible for security matters on the Buyer's behalf, and when required by the Buyer shall:

 - 11.1** take all reasonable measures to make available for interview by the Buyer any members of Supplier Staff identified by the Buyer, or by a person who is responsible for security matters, for the purposes of the investigation. Supplier Staff



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may be accompanied by and be advised or represented by another person whose attendance at the interview is acceptable to the Buyer; and

- 11.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in whatever form which may be reasonably required by the Buyer, or by a person who is responsible for security matters on the Buyer's behalf, for the purposes of investigation as long as the provision of that material does not prevent the Supplier from performing the Services. The Buyer may retain any such material for use in connection with the investigation and, as far as possible, may provide the Supplier with a copy of any material retained.
- 12 In providing the Services the Supplier shall comply with PSI 10/2012 and other applicable provisions relating to security as published by the Buyer from time to time.
- 13 Nothing in the Contract is deemed to provide any "authorisation" to the Supplier in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.



Schedule 33 (Background Checks)

1 When you should use this Schedule

This Schedule 33 should be used where Supplier Staff must be vetted before working on the Contract and “Relevant Conviction” means any conviction listed in Schedule 33Annex 1.

2 Relevant Convictions

2.1 The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

2.2 Notwithstanding Paragraph 2.1, for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier shall (and shall procure that the relevant Subcontractor must):

2.2.1 carry out a check with the records held by the Department for Education;

2.2.2 conduct thorough questioning regarding any Relevant Convictions; and

2.2.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service

and the Supplier shall not (and shall ensure that any Subcontractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.



Annex 1 – Relevant Convictions

'Relevant' convictions are:

- any kind of violence including (but not limited to) threatening behaviour, offences concerning the intention to harm or offences which resulted in actual bodily harm;
- offences listed in the Sex Offences Act 2003;
- the unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking;
- offences involving firearms;
- offences involving arson; and
- offences listed in the Terrorism Act 2006.



Schedule 35 (Intellectual Property Rights and Additional Terms on Digital Deliverables)

1 When this schedule should be used

This Schedule is designed to provide additional provisions on Intellectual Property Rights in relation to the Digital Deliverables and to facilitate the provision of ICT Services required under this Contract.

PART A – ICT SERVICES

2 Buyer due diligence requirements

2.1 Notwithstanding the provisions of Clause 2, The Supplier acknowledges that it has satisfied itself of all relevant details that it considers necessary or relevant for the provision of the ICT Services, including but not limited to the;

- (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
- (b) operating processes and procedures and the working methods of the Buyer;
- (c) ownership, functionality, capacity, condition of the Buyer Assets and their suitability for use in the provision of the Services and Digital Deliverables; and
- (d) existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- (e) The Supplier confirms that it has advised the Buyer in writing of:
- (f) each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services required to perform the Services and provide the Deliverables under this Contract;
- (g) the actions needed to remedy each such unsuitable aspect; and
- (h) a timetable for and the costs of those actions (which the Supplier confirms have been fully reflected and costed in the Contract).

3 Supplier Warranties

3.1 The Supplier warrants:

- (a) it has and shall continue to have all necessary rights, consents and permissions in and to the Licensed Software made available by the Supplier



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(and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Services and Deliverables by the Buyer and Related Contractors (as applicable); and that,

- (b) all components of any Specially Written Software, New IPR any Supplier Existing IPRs (used in the delivery of the Services and Digital Deliverables) and New IPR shall:
 - (i) perform in all material respects in accordance with the relevant specifications including but not limited to Schedule 2 and Schedule 10 and Documentation; and
 - (ii) not infringe the IPRs of any third party.

3.2 The Supplier represents to the Buyer:

- (a) that the Services and Digital Deliverables will meet the Buyer's requirements as set out in the Contract, including Schedule 2; and
- (b) to maintain all interface and interoperability between Third Party Software or services, and Specially Written Software and the New IPR as required for the performance of the Digital Deliverables and the Services.

4 Provision of ICT Services

4.1 The Supplier shall:

- (a) ensure that any upgrade, update or New Release relating to the Supplier Software that will be used by the Supplier to provide the Services, any Digital Deliverables, Specially Written Software or New IPR, complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer in writing at least 3 Months before deploying any New Release, update or upgrade;
- (b) ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier in connection with the Digital Deliverables, Specially Written Software or New IPR are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (c) ensure that the Supplier System will be free of all encumbrances;
- (d) ensure that the Digital Deliverables are fully compatible with any Buyer Software and Buyer System; and
- (e) minimise any disruption to the Services and the ICT Environment and/or the Buyer System and operations.



5 Standards and quality requirements

- 5.1 The Supplier shall develop and provide to the Buyer, within 3 Months of the Effective Date, Quality Plans that ensure that all aspects of the Services and Deliverables are the subject of quality management systems and are consistent with Schedule 2 and the standards required by this Contract.
- 5.2 The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not constitute an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables and Services are provided to the standard required by this Contract, including Schedule 2.
- 5.3 Following the Approval of the Quality Plans, the Supplier shall provide the Services and Deliverables in accordance with the Quality Plans.
- 5.4 The Supplier shall ensure that all Staff shall at all times during the Contract Period:
- (a) be appropriately experienced, qualified and trained to create, develop and supply the Services and Deliverables in accordance with this Contract;
 - (b) apply all due skill, care, diligence in faithfully performing their duties and exercising such powers as necessary in connection with the provision of the Services and Deliverables; and
 - (c) obey all lawful instructions and reasonable directions of the Buyer (including compliance with any reasonable policies and procedures as may be communicated by the Buyer from time to time); and
 - (d) to provide the Deliverables and Services to the reasonable satisfaction of the Buyer.

6 ICT Audit

- 6.1 Notwithstanding the general rights of Audit under Clause 6 which shall apply, the Supplier shall, upon reasonable prior notice, permit the Buyer and their Auditors or any third party as may be appointed on the Buyer's behalf, access to the Supplier's premises to:
- (a) inspect the Supplier System, ICT Environment and the wider service delivery environment (or any part of them);
 - (b) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to mobilisation and testing;
 - (c) review the Supplier's quality management systems including all relevant Quality Plans; and



- (d) review and request copies of the Supplier's documentation or any further details as may be reasonably necessary to conduct a complete audit of the ICT Environment.

7 Maintenance of the supplier system and ICT system

- 7.1 The Supplier shall create and maintain a rolling schedule of planned maintenance to the Supplier System and the ICT Environment, including any maintenance that would impact availability ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 7.2 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule. Permitted Maintenance should be outside the core hours of availability as required under Schedule 10.
- 7.3 The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance and in any case, shall notify the Buyer once any Emergency Maintenance is underway or complete.
- 7.4 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment, Supplier System and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables and Services.

8 Malicious Software

- 8.1.1 The Supplier shall, at all times, use and maintain the latest versions of anti-virus Software available from an industry accepted anti-virus software vendor to check any Software used in connection with the Services and Deliverables for, contain the spread of, and minimise the impact of Malicious Software.
- 8.1.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables and Services to its desired operating efficiency.
- 8.1.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 8.1.2 shall be borne by the Parties as follows:
 - (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the third-party software supplied by the Supplier or the



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Government Data (whilst the Government 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

- (b) by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).



PART B – INTELLECTUAL PROPERTY RIGHTS

1 Intellectual Property Rights – general provisions

- 1.1 Except as expressly provided for in this Contract or otherwise agreed in writing:
- 1.1.1 the Buyer does not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
- (a) the Supplier Software;
 - (b) any Third Party Software;
 - (c) the Third Party IPRs;
 - (d) the Supplier Existing IPRs; and
 - (e) any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or New IPR; and
- 1.1.2 the Supplier does not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including:
- (a) the Buyer Software;
 - (a) the Government Data; and
 - (b) the Buyer Existing IPRs; and
- 1.1.3 neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks.
- 1.2 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 35), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.3 If the Supplier becomes aware at any time, including after the Contract Period, that, in respect of any Deliverable, the Buyer has not received the licences to the Supplier Software, any Third Party Software, the Third Party IPRs and the Supplier Existing IPRs required by Paragraphs 3, 4 and 6, the Supplier must, within 10 Working Days notify the Buyer:
- 1.3.1 the specific Intellectual Property Rights the Buyer has not received licences to; and
- 1.3.2 the Deliverables affected.
- 1.4 Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the



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Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

1.5 Unless otherwise agreed in writing, the Supplier will record in the table at Annex 1 to this Schedule and keep updated throughout the Contract Period:

1.5.1 any Specially Written Software and New IPR; and

1.5.2 where:

- (a) the Specially Written Software or New IPR adapts Supplier Software, third party software, Third Party IPRs, or Supplier Existing IPRs; or
- (b) Supplier Software, Third Party Software, Third Party IPRs, or Supplier Existing IPRs is embedded in, or forms an integral part of, the Specially Written Software or New IPR;

full details of the Supplier Software, Third Party Software, Third Party IPRs, or Supplier Existing IPRs.

1.6 For the avoidance of doubt:

1.6.1 except as provided for in Paragraph 3.2.3(c)(ii), the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraph 3;

1.6.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

- (a) Sections 55 and 56 of the Patents Act 1977;
- (b) section 12 of the Registered Designs Act 1949; or
- (c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

2 Ownership and delivery of IPR created under the contract

2.1 Subject to Paragraph 1.1.1, the Supplier agrees to:

2.1.1 transfer to the Buyer, or procure the transfer to the Buyer of all Intellectual Property Rights in the Specially Written Software and New IPRs, including:

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software,



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(together the "**Software Supporting Materials**"); and

- 2.1.2 execute all such assignments required to transfer properly any rights in the Specially Written Software and New IPR to the Buyer.
- 2.2 The Supplier must deliver to the Buyer:
 - 2.2.1 the Specially Written Software;
 - 2.2.2 any software elements of the New IPR;
 - 2.2.3 relevant Documentation; and
 - 2.2.4 all related Software Supporting Materials,
within 5 Working Days of
 - 2.2.5 either:
 - (a) initial release or deployment; or
 - (b) if a relevant Milestone has been identified in an Implementation Plan, achievement of that Milestone; and
 - 2.2.6 each subsequent release or deployment of the Specially Written Software and any software elements of the New IPR.
- 2.3 Where the Supplier delivers materials to the Buyer under Paragraph 2.2, it must do so in a format specified by the Buyer. Where the Buyer specifies the material is to be delivered on media, the Buyer becomes the owner of the media containing the material on delivery.

3 Use of Supplier or third party non-COTS or non-COTS existing IPR

- 3.1 The Supplier must not use any:
 - 3.1.1 Supplier Non-COTS Software; or
 - 3.1.2 Supplier Non-COTS Existing IPR;in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of New IPRs) unless:
 - 3.1.3 in the case of Supplier Non-COTS Software and the software elements of Supplier Non-COTS Existing IPR, it is:
 - (a) detailed in Annex 1 of this Schedule; or
 - (b) both:
 - (i) submitted to the relevant technical representative of the Buyer for review; and



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(ii) approved by the Buyer; and

3.1.4 in the case of non-software elements of Supplier Non-COTS Existing IPR, it is Approved by the Buyer in writing.

3.2 The Supplier must not use any:

3.2.1 Third Party Non-COTS Software; or

3.2.2 Third Party Non-COTS Existing IPR,

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of New IPRs) unless:

3.2.3 in the case of Third Party Non-COTS Software and the software elements of Third Party Non-COTS Existing IPR, it is:

(a) detailed Annex 1 of this Schedule; or

(b) both:

(i) submitted to the relevant technical representative of the Buyer for review; and

(ii) approved by the Buyer; and

(c) one of the following conditions is met:

(i) the owner or an authorised licensor of the relevant IPR has granted the Buyer a direct licence on the terms equivalent to those set out in Paragraph 6; or

(ii) if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 3.2.3(c)(i), all the following conditions are met:

(A) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(B) the Buyer approves the licence terms of one of those third parties; and

(C) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or



- (iii) if the Supplier cannot meet the conditions in Paragraphs 3.2.3(c)(i) and 3.2.3(c)(ii), the Buyer has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved; or

3.2.4 in the case of non-software elements of Third-Party Non-COTS Existing IPR, it is approved by the Buyer in writing.

4 Use of supplier or third party COTS software or COTS existing IPR

4.1 The Supplier must not use any:

- 4.1.1 Supplier COTS Software;
- 4.1.2 Supplier COTS Existing IPR;
- 4.1.3 Third Party COTS Software; or
- 4.1.4 Third Party COTS Existing IPR,

in the provision of the Services (including in any Specially Written Software or in the software element of New IPRs) unless:

- 4.1.5 in the case of Supplier COTS Software, Third Party COTS Software and the software elements of Supplier COTS Existing IPR and Supplier COTS Existing IPR, it is either:
 - (a) detailed in Annex 1 of this Schedule; or
 - (b) both:
 - (i) submitted to the relevant technical representative of the Buyer for review; and
 - (ii) approved by the Buyer; and
- 4.1.6 all the following conditions are met:
 - (a) the Supplier has provided the Buyer with the applicable terms for the IPRs (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
 - (b) the Buyer has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Buyer.

5 Licences granted by the Buyer

5.1 The Buyer grants the Supplier a licence to the

- 5.1.1 the New IPR;



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5.1.2 the Specially Written Software;

5.1.3 the Buyer Software;

5.1.4 the Government Data; and

5.1.5 the Buyer Existing IPRs

that:

5.1.6 is non-exclusive, royalty-free and non-transferable;

5.1.7 is sub-licensable to any Sub-contractor where

(a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Annex 2 of this Schedule; and

(b) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

5.1.8 allows the Supplier and any sub-licensee to use, copy and adapt any licensed IPRs for the purpose of fulfilling its obligations under this Contract; and

5.1.9 terminates at the later of:

(a) the expiry of the Contract Period; or

(b) the end of any Termination Assistance Period.

5.2 When the licence granted under Paragraph 5.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 5.1.7:

5.2.1 immediately cease all use of the licensed IPR;

5.2.2 either:

(a) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the licensed IPR; or

(b) if the Buyer has not made an election within 6 Months of the termination of the licence, destroy the documents and other tangible materials that contain any of the licensed IPR; and

5.2.3 ensure, so far as reasonably practicable, that any licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.



6 Licences in respect of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR

6.1 Subject to the Buyer approving the use of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR under Paragraph 3, the Supplier grants the Buyer a licence to the Supplier Existing IPRs (**"the Supplier Existing IPR Licence"**) on the terms set out in Paragraph 6.3 in respect of each Deliverable where:

- 6.1.1 the Supplier Non-COTS Software and Supplier Non-COTS Existing IPR is embedded in the Deliverable;
- 6.1.2 the Supplier Non-COTS Software and Supplier Non-COTS Existing IPR is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 6.4; or
- 6.1.3 the Deliverable is a customisation or adaptation of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR.

6.2 The categories of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR set out in Paragraph 6.1 are mutually exclusive.

6.3 The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, transferable, sub-licensable, worldwide licence that:

- 6.3.1 in the case of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR embedded in a Deliverable:
 - (a) has no restriction on the identity of any transferee or sub-licensee;
 - (b) is sub-licensable for any of the purposes set out in Paragraph 6.4;
 - (c) allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Non-COTS Software and Supplier Non-COTS Existing IPR for any of the purposes set out in Paragraph 6.4; and
- 6.3.2 in the case of Supplier Non-COTS Software and Supplier Non-COTS Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
 - (a) allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Non-COTS Software and Supplier Non-COTS Existing IPR for any of the purposes set out in Paragraph 6.4;



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- (b) is transferrable to only:
 - (i) any body that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
 - (ii) the Core Education Providers, the CIAG Providers and/or the Prison Staff.

6.3.3 terminates at the later of:

- (a) the expiry of the Contract Period; or
 - (b) the end of any Termination Assistance Period.
- and

6.3.4 is subject to the restrictions that:

- (a) no sub-licence granted to the Supplier Non-COTS Software and Supplier Non-COTS Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph; and
- (b) any transferee or sublicensee of the Supplier Non-COTS Software and Supplier Non-COTS Existing IPR must either:
 - (i) enter into a direct arrangement with the Supplier in the form set out in Annex 2 of this Schedule; or
 - (ii) enter into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19.

6.4 For the purposes of Paragraphs 6.1 and 6.3, the relevant purposes are:

- 6.4.1 to allow the Buyer or any End User and the Core Education Providers, CIAG Providers and Prison Staff to receive and use the Deliverables;
- 6.4.2 to commercially exploit (including by publication under Open Licence) the New IPR, Specially Written Software and Software Supporting Materials; and
- 6.4.3 for any purpose relating to the exercise of the Buyer's business or function.

6.5 Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

- 6.5.1 the Supplier Existing IPR Licence is unaffected; and
- 6.5.2 any successor body of the Buyer that is a Crown Body shall have the benefit of the Supplier Existing IPR Licence.



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- 6.6 Where the Supplier Existing IPR Licence is transferred under Paragraph 6.3.1(a) or 6.3.2(b) or there is a change in the Buyer's legal status to which Paragraph 6.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the Buyer under this Paragraph.

7 Open Licence Publication

- 7.1 Subject to Paragraph 7.8, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR, the Specially Written Software or the Software Supporting Materials.

- 7.2 The Supplier warrants that:

7.2.1 the New IPR, the Specially Written Software or the Software Supporting Materials are suitable for release under Open Licence;

7.2.2 in developing New IPR, the Specially Written Software or the Software Supporting Materials it has used reasonable endeavours to ensure that:

(a) the publication by the Buyer will not:

(i) allow a third party to use them in to compromise the operation, running or security of the Specially Written Software, the New IPRs, the Buyer System or the Supplier System;

(ii) cause any harm or damage to any party using them; or

(iii) breach the rights of any third party; and

(b) they do not contain any material which would bring the Buyer into disrepute if published.

- 7.3 The Supplier must not include in the New IPR, the Specially Written Software or the Software Supporting Materials provided for publication by Open Licence any Supplier Software, Supplier Existing IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or New IPR unless the Supplier consents to:

7.3.1 their publication by the Buyer under Open Licence; and

7.3.2 their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Buyer.

- 7.4 The Buyer will not be liable in the event that any Supplier Software, Supplier Existing IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or New IPR is included in the Open Licence Publication Material published by the Buyer

- 7.5 The Supplier must supply any or all the New IPR, the Specially Written Software or the Software Supporting Materials in a format (whether it is provided in any



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other format or not) suitable for publication under an Open Licence (the "**Open Licence Publication Material**") within 30 Working Days of written request from the Buyer ("**Buyer Open Licence Request**").

7.6 The Supplier may within 15 Working Days of Buyer Open Licence Request under Paragraph 7.5 request in writing that the Buyer excludes all or part of:

7.6.1 the New IPR, the Specially Written Software or the Software Supporting Materials Items; or

7.6.2 the Supplier Software, the Third Party Software, the Third Party IPRs, the Supplier Existing IPRs, or any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or New IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 7.5,

from Open Licence publication.

7.7 The Supplier's request under Paragraph 7.5 must include the Supplier's assessment of the impact the Buyer's agreeing to the request would have on its ability to publish other New IPR, Specially Written Software or Software Supporting Materials under an Open Licence.

7.8 Any decision to Approve any such request from the Supplier under Paragraph 7.5 shall be at the Buyer's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

8 IPR asset management

8.1 The Parties shall work together to ensure that there is appropriate IPR asset management under the Contract, and:

8.2 where the Supplier is working on the Buyer's System, the Supplier shall comply with the Buyer's IPR asset management approach and procedures.

8.3 where the Supplier is working on the Supplier's System, the Buyer will ensure that it maintains its IPR asset management procedures in accordance with Good Industry Practice.

8.4 Records and materials associated with IPR asset management shall form part of the Deliverables, including those relating to any Specially Written Software or New IPR.

8.5 The Supplier shall comply with any instructions given by the Buyer as to where it shall store all work in progress Deliverables and finished Deliverables (including all Documentation and Source Code) during the Contract Period and at the stated intervals or frequency specified by the Buyer and upon termination of the Contract.

8.6 The Supplier shall ensure that all items it uploads into any repository contain



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sufficient detail, code annotations and instructions so that a third-party developer (with the relevant technical abilities within the applicable role) would be able to understand how the item was created and how it works together with other items in the repository within a reasonable timeframe.

- 8.7 The Supplier shall maintain a register of all Open Source Software it has used in the provision of the Deliverables as part of its IPR asset management obligations under this Contract.

Annex 1: Software

1. The Software

- 1.1 The Software below is licensed to the Buyer in accordance with this Schedule.
- 1.2 The Parties agree that they will update this Schedule regularly, and in any event no less than every 6 Months from the Effective Date, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2. Supplier Software

- 2.1 The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests	REDACTED Under Section 43 of the FOIA: Commercial Interests



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Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

3. Third Party Software

3.1 The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

NOT APPLICABLE



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Annex 2: Form of Confidentiality Undertaking

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

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 Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information” **Inform-** 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;

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- (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 Agreement 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:
- (e) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (f) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (g) 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 Clause 1.1.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if



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they were immediately followed by the words “without limitation”;

- 1.2.4 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 Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

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

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 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);
- 2.1.3 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 Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 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
- 2.1.7 upon the expiry or termination of the Sub-licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) 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
 - (c) make no further use of any Confidential Information.



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3. Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 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:
- 3.3.1 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
 - 3.3.2 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 Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 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 Agreement 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.



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- 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 Agreement. 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 Agreement 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 Agreement 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 Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement 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 Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. Notices

- 5.1 Any notice to be given under this Agreement (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:

- 5.2.1 if to be given to the Supplier shall be sent to:

[Address]

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

- 5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6. Governing law

- 6.1 This Agreement 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



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Agreement 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 Agreement.

IN WITNESS of the above this Agreement 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: