MODEL SERVICES AGREEMENT

DATED: 9th February 2023

EFFECTIVE DATE OF CONTRACT: 1st March 2023

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

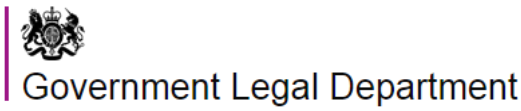
and

(2) DHL Global Forwarding (UK) Ltd

AGREEMENT

relating to

C8937 – International Secure Delivery



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THIS AGREEMENT is made on 9th February 2023

BETWEEN:

(1) ***THE SECRETARY OF STATE FOR THE HOME DEPARTMENT*** of 2 Marsham Street, London, SW1P 4DF (the "**Authority**"); and

(2) **DHL Global Forwarding (UK) Ltd a company registered in England and Wales under company number 4056042 whose registered office is at Eastworth House, Eastworth Road, Chertsey, Surrey, KT16 8SH (the "**Supplier**")**

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

INTRODUCTION

Her Majesty's Passport Office (HMPO), which is part of the Home Office, has a contract for international secure delivery mail services. This contract is due to expire in 2023 and will be re-competed.

HMPO would like to procure services for secure delivery to Global overseas locations. The primary objective of the upcoming tender is to maintain business continuity of a wide range of existing International Secure Delivery services, including but not limited to:

- Deliver international centrally printed passports and return supporting documents, securely and promptly, from the Organisation in the UK to international domestic addresses, Visa Application Centres, Embassies, other designated UK government locations worldwide and Government Offices in Overseas Territories and Gibraltar.
- Transfer international applications, securely and promptly, from Visa Application Centres, Embassies or other designated UK government locations worldwide, to HMPO sites in the UK.
- Transfer international applications, securely and promptly, from Government Offices in Overseas Territories, to a HMPO site in the UK.
- Other requirements for parts of the Home Office for international secure mail, such as General Register Office.
- Collect Emergency Travel Documents and associated items printed in overseas locations on behalf of the Foreign and Commonwealth Office (FCDO)

(A) *On 4th March 2022 the Authority advertised via Find a Tender Service (reference 2022/S 000-005956), inviting prospective suppliers to submit proposals for the International Secure Delivery Service.*

(B) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.

(C) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.

1.2 In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to a gender includes the other gender and the neuter;

(c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

(d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

(e) any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):

(i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("**EEA**") agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit 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; and

(ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;

(f) 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";

(g) 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;

(h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

(i) unless otherwise provided and save for references in Annexes 1 to 3 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and

(j) references to this Agreement are references to this Agreement as amended from time to time.

1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.

1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Clauses and Schedule 1 (*Definitions*);

(b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;

(c) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and

(d) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).

1.5 The Schedules and their Annexes form part of this Agreement.

1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

(a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

(b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:

(i) the Authority Requirements;

(ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;

(iii) the operating processes and procedures and the working methods of the Authority;

(iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

(v) the existing contracts (including any licences, support, maintenance and other agreements 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 Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

(d) it has advised the Authority in writing of:

(i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;

(ii) the actions needed to remedy each such unsuitable aspect; and

(iii) 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 this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

(a) any unsuitable aspects of the Operating Environment;

(b) any misinterpretation of the Authority Requirements; and/or

(c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Authority represents and warrants that:

(a) it has full capacity and authority to enter into and to perform this Agreement;

(b) this Agreement is executed by its duly authorised representative;

(c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

(d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

(a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

(b) it has full capacity and authority to enter into and to perform this Agreement;

(c) this Agreement is executed by its duly authorised representative;

(d) it has all necessary consents and regulatory approvals to enter into this Agreement;

(e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

(f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

(g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

(h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other

documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

(i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

(j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;

(k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;

(l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

(m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

(n) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient

detail to enable the other Party to make an accurate assessment of the situation.

3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

4.1 This Agreement shall:

(a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 38 (*Waiver and Cumulative Remedies*), 39 (*Relationship of the Parties*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 45 (*Notices*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and

(b) unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), terminate:

(i) at the end of the Initial Term; or

(ii) if the Authority elects to extend the Initial Term by giving the Supplier at least 30 Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 38 (*Waiver and Cumulative Remedies*), 39 (*Relationship of the Parties*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 45 (*Notices*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:

(a) this Agreement shall automatically cease and shall not come into effect; and

(b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances

which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

5 SERVICES

Standard of Services

5.1 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 Service Commencement Date.

5.2 The Supplier shall ensure that:

(a) the Services:

(i) comply in all respects with the Services Description; and

(ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and

(b) where:

(i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and

(ii) the standard and level of service received by the Authority in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

(a) perform its obligations under this Agreement, 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 Authority 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 5.3(a)(i) to 5.3(a)(vi); and

(b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

(a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;

(b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, 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;

(c) ensure that:

(i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;

(ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security*

Management)) shall notify the Authority 3 months before the release of any new Software or Upgrade;

(iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

(iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and

(v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;

(d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;

(e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

(f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

(g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;

(h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);

(i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;

(j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;

(k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;

(l) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

(m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority; and

(n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

(a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

(b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

(c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier

warrants to the Authority that all components of the Specially Written Software shall:

(a) be free from material design and programming errors;

(b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and

(c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

5.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

(a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(b) the existence of an unresolved Dispute; and/or

(c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 34.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

5.10 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

5.12 Following receipt of the Authority's notice pursuant to Clause 5.10:

(a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

(b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;

(c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and

(d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Power of attorney

5.13 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

5.14 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

6 IMPLEMENTATION

Quality Plans

6.1 The Supplier shall develop, within 10 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services 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 ("**Quality Plans**").

6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

6.3 Following the approval by the Authority of the Quality Plans:

(a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and

(b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.5 The Supplier shall:

(a) comply with the Implementation Plan; and

(b) ensure that each Milestone is Achieved on or before its Milestone Date.

6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

(a) it shall:

(i) notify the Authority in accordance with Clause 28.1 (*Rectification Plan Process*); and

(ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

(iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

(b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 29 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

(a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and

(b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 If in any Service Period:

(a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);

(b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));

(c) a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or

(d) a Material PI Failure occurs:

(i) the Supplier shall comply with the Rectification Plan Process; and

(ii) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

(a) the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;

(b) the KPI Failure:

(i) breaches the relevant KPI Service Threshold;

(ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or

(iii) results in:

(A) the corruption or loss of any Authority Data (in which case the remedies under Clause 21.7 (*Authority Data and Security Requirements*) shall also be available); and/or

(B) the Authority being required to make a compensation payment to one or more third parties;

(c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or

(d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

(a) the Authority shall (subject to the Service Credit Cap set out in Clause 26.4(b) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and

(b) if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

(a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and

(b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 34.1 or 34.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice:

(a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or

(b) convert one or more:

(i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or

(ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a

Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

(a) the total number of Key Performance Indicators does not exceed 20;

(b) the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and

(c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:

(a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

(b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

(c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;

(d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

(e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment 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 IT Environment and the Services.

Supply of Goods

9.7 Not applicable

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).

10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 23 (*Transparency and Freedom of Information*), 24 (*Protection of Personal Data*) and, to the extent specified therein, Clause 30 (*Remedial Adviser*) and Clause 31 (*Step-In Rights*).

10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

10.7 If the Authority wishes to:

(a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6; or

(b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Benchmarking

10.8 The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

10.9 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

(b) promptly provide to the Authority:

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

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

SECTION D – CONTRACT GOVERNANCE

11 GOVERNANCE

11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

(a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and

(b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

(a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

(b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 CHANGE

Change Control Procedure

13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

(a) a General Change in Law; or

(b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

(a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(i) whether any Change is required to the Services, the Charges or this Agreement; and

(ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and

(b) provide the Authority with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

(iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

(a) Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

(b) ensure that all Supplier Personnel:

(i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*); and

(iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);

(c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

(d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

(e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

(f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

(g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

(h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

(a) refuse admission to the relevant person(s) to the Authority Premises; and/or

(b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.4 The Authority 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 Personnel.

14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

(a) requested to do so by the Authority;

(b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;

(c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or

(d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

(a) notify the Authority promptly of the absence of any Key Personnel (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);

(b) ensure that any Key Role is not vacant for any longer than 10 Working Days;

(c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

(d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing

personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

(e) ensure that any replacement for a Key Role:

(i) has a level of qualifications and experience appropriate to the relevant Key Role; and

(ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that:

(a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

(b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

(a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:

(i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;

(ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;

(iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and

(iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;

(b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and

(c) Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

(a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of **REDACTED** that arise during the Term;

(b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;

(c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

(d) provide reports on the information at Clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and

(e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above 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.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

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

(a) manage any Sub-contractors in accordance with Good Industry Practice;

(b) comply with its obligations under this Agreement in the delivery of the Services; and

(c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

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

(b) the scope of any Services to be provided by the proposed Sub-contractor; and

(c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

15.7 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:

(a) a copy of the proposed Sub-contract; and

(b) any further information reasonably requested by the Authority.

15.8 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

(a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;

(b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;

(c) the proposed Sub-contractor employs unfit persons; and/or

(d) the proposed Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*);

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

15.9 If:

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

(i) the Supplier's notice issued pursuant to Clause 15.6; and

(ii) any further information requested by the Authority pursuant to Clause 15.7; and

(b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

Appointment of Key Sub-contractors

15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

(a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

(b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

(c) the proposed Key Sub-contractor employs unfit persons; and/or

(d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*).

15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).

15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

(a) provisions which will enable the Supplier to discharge its obligations under this Agreement;

(b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;

(c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;

(d) 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 Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;

(e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

(i) data protection requirements set out in Clauses 21 (Authority *Data and Security Requirements*) and 24 (*Protection of Personal Data*);

(ii) FOIA requirements set out in Clause 23 (*Transparency and Freedom of Information*);

(iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(m) (*Services*);

(iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and

(v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);

(f) 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 Authority under Clauses 34.1(a) (*Termination by the Authority*) and 35.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;

(g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;

(h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 30 (*Remedial Adviser*);

(i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 31 (*Step-in Rights*);

(j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and

(k) a provision requiring the Key Sub-contractor to:

(i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:

(A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

(B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

(ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

15.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

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

(a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;

(b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

(c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be

regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;

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

(e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and

(f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.15 The Supplier shall:

(a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;

(b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.15(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.16 Without prejudice to Clause 15.15(a), the Supplier shall:

(a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

(i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or

(ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and

(b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.16(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.17 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay

15.18 or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within 15 Working Days of

submission of the latest Balanced Scorecard Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

(a) identification of the primary causes of failure to pay **REDACTED** or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;

(b) actions to address each of the causes set out in sub-paragraph (a); and

(c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

15.19 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.

15.20 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor 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.

15.21 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority 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).

15.22 Notwithstanding any provision of Clauses 22 (*Confidentiality*) and 25 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay **REDACTED** or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.23 The Authority may require the Supplier to terminate:

(a) a Sub-contract where:

(i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1(b) (*Termination by the Authority*);

(ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

(iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

(iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.28; and

(b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:

(i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

Competitive Terms

15.24 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

(a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

(b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

15.25 If the Authority exercises either of its options pursuant to Clause 15.24, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

15.26 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

(a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

(b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

15.27 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

15.28 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

(a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

(b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

15.29 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the of the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

15.30 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS in

16.1 Except as expressly set out in this Agreement:

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

(i) the Supplier Software;

(ii) the Third Party Software;

(iii) the Third Party IPRs; and

(iv) the Supplier Background IPRs;

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

(i) the Authority Software;

(ii) the Authority Data; and

(iii) the Authority Background IPRs;

(c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

16.4 Unless the Authority otherwise agrees in advance in writing:

(a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and

(b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.

16.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable

provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause 20 (*Open Source Publication*).

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

17.1 Subject to Clause 17.17 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause 16.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

(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 (together the "**Software Supporting Materials**");

but not including any Know-How, trade secrets or Confidential Information.

17.2 The Supplier:

(a) shall:

(i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

(ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

(iii) without prejudice to Clause 17.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

(b) acknowledges and agrees that the ownership of the media referred to in Clause 17.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and

(c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 5 (*Software*) or sent to the Technical Board for review and approval granted by the Authority.

17.4 The Supplier hereby grants to the Authority:

(a) subject to the provisions of Clause 17.17 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

(i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and

(ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;

(b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 (*Authority's right to sub-licence*) and 17.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

(c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

17.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.4(a)(ii) by giving thirty

(30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 17.7 (*Authority's right to sub-license*) commits any material breach of the terms of Clause 17.4(a)(i) or 17.4(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

17.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.5, the Authority shall:

(a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);

(b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and

(c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

17.7 Subject to Clause 17.17 (*Patents*) the Authority may sub-license:

(a) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

(i) the sub-licence is on terms no broader than those granted to the Authority;

(ii) the sub-licence authorises the third party to use the rights licensed in Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and

(iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and

(b) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:

(i) the sub-licence is on terms no broader than those granted to the Authority; and

(ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

17.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to:

(a) A Central Government Body; or

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

17.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*).

17.10 If a licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

17.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 5 (*Software*) or approval is granted by the Authority following a review by the Technical Board and has in each case either:

(a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses 17.4(a) and 17.5 (Supplier Software and Supplier Background IPRs) and Clause 17.8 (*Authority's right to assign/novate licences*); or

(b) complied with the provisions of Clause 17.12.

17.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.11(a), the Supplier shall:

(a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

(b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

17.13 The Supplier shall:

(a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and

(b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Clause 17.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

17.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

17.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

(a) grant (or procure the grant) to any Replacement Supplier of:

(i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less

favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Supplier;

(ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

(b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

17.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

18 LICENCES GRANTED BY THE AUTHORITY

18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

(a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (*Confidentiality*); and

(b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

(a) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);

(b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and

(c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

19 IPRs INDEMNITY

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

(a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

(iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

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

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

(a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

(b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

20 OPEN SOURCE PUBLICATION

20.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.

20.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:

(a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;

(b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;

(c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;

(d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and

(e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.

20.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

20.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-clause 20.1.

21 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

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

21.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).

21.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

21.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).

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

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

(a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

21.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

21.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).

21.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

21.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

21.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 21.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

22 CONFIDENTIALITY

22.1 For the purposes of this Clause 22, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

22.2 Except to the extent set out in this Clause 22 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

(a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

(b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

(c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

(d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

22.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

(a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

(b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

(ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or

(iii) the conduct of a Central Government Body review in respect of this Agreement; or

(c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

22.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

22.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

(a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;

(b) its auditors; and

(c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 22.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

22.6 The Authority may disclose the Confidential Information of the Supplier:

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

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

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

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause

22.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;

(e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 31 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 30 (*Remedial Adviser*) and Exit Management rights; or

(f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 22.

22.7 Nothing in this Clause 22 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23 TRANSPARENCY AND FREEDOM OF INFORMATION

23.1 The Parties acknowledge that:

(a) the Transparency Reports;

(b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for –

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(ii) Commercially Sensitive Information; and

(c) the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

23.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

23.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of

the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).

23.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

23.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

23.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 22.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

23.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

(d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

23.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive

Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

24 PROTECTION OF PERSONAL DATA

Status of the Controller

24.1 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 this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

(a) "Controller" (where the other Party acts as the "Processor");

(b) "Processor" (where the other Party acts as the "Controller");

(c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

(d) "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 11 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

24.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (*Processing Personal Data*) by the Controller.

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

24.4 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:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

24.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 11 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 21 (*Authority Data and Security Requirements*), 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:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that:

(i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*));

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor's duties under this Clause, Clauses 22 (*Confidentiality*) and 21 (*Authority Data and Security Requirements*);

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) 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 this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data;

(d) not transfer Personal Data outside of the EU, other than to the Controller, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) 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

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

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

24.6 Subject to Clause 24.7, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) 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

(f) becomes aware of a Data Loss Event.

24.7 The Processor's obligation to notify under Clause 24.6 shall include the provision of further information to the Controller in phases, as details become available.

24.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's

obligations under Data Protection Legislation and any complaint, communication or request made under Clause 24.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event; and/or

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

24.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

(a) the Controller determines that the processing is not occasional;

(b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

24.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

24.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

24.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 24 such that they apply to the Sub-processor; and

(d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

24.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

24.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

24.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

24.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 1 to Schedule 11 (*Processing Personal Data*).

Where the Parties are Independent Controllers of Personal Data

24.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

24.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

24.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 24.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

24.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.

24.21 The Parties shall only provide Personal Data to each other:

(a) to the extent necessary to perform the respective obligations under this Agreement;

(b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and

(c) where it has recorded it in Schedule 11 (*Processing Personal Data*).

24.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

24.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.

24.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**the Request Recipient**"):

(a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

(b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:

(i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and

(ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

24.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:

(a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;

(b) implement any measures necessary to restore the security of any compromised Personal Data;

(c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

(d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

24.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (*Processing Personal Data*).

24.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (*Processing Personal Data*).

24.28 Notwithstanding the general application of Clauses 24.2 to 24.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 24.16 to 24.27.

Standard Contractual Clauses

24.29 It is noted that the UK formally left the European Union on 31 January 2020 and the legal transition period under which it is treated by the European Union as a Member State for the purposes of European Union law will end on 31 December 2020 (the "**Transition Period**"). If the Transition Period expires before the European Commission has adopted an adequacy decision for the UK under Article 45 of the GDPR and the Supplier is located within the EEA, Clauses 24.30 and 24.31 below shall apply.

24.30 In the event that both Parties are Controllers of the Personal Data, the Parties agree:

24.30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2004/915/EC set out in Annex 2 to Schedule 11 in respect of data transfers by the Supplier outside of the EEA;

24.30.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;

24.30.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and

24.30.4 that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

24.31 In the event that the Supplier is a Controller of Personal Data and the Authority is a Processor, the Parties agree:

24.31.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2010/87/EU set out in Annex 3 to Schedule 11 in respect of data transfers by the Supplier outside of the EEA;

24.31.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;

24.31.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and

24.31.4 that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

24.32 In the event that (i) the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time and (ii) the European Commission has not adopted an adequacy decision for the UK before the European Commission decision regarding such new Standard Contractual Clauses becomes effective, the Parties agree:

24.32.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Annex 2 or 3 to Schedule 11 (as the context requires) and that such incorporation is not a Change;

24.32.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;

24.32.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and

24.32.4 that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

25 PUBLICITY AND BRANDING

25.1 The Supplier shall not:

(a) make any press announcements or publicise this Agreement or its contents in any way; or

(b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

25.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

26 LIMITATIONS ON LIABILITY

Unlimited liability

26.1 Neither Party limits its liability for:

(a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

(b) fraud or fraudulent misrepresentation by it or its employees;

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

(d) any liability to the extent it cannot be limited or excluded by Law.

26.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (*VAT*), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be **REDACTED**.

26.3 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be **REDACTED**.

Financial and other limits

26.4 Subject to Clauses 26.1 and 26.2 (*Unlimited Liability*) and Clauses 26.7 (*Consequential losses*):

(a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed **REDACTED**;

(b) the Supplier's aggregate liability in respect of:

(i) loss or damage to Authority Data;

(ii) breach of the Data Protection Legislation; and

(iii) breach of the Standard Contractual Clauses,

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed **REDACTED**;

(c) the Supplier's aggregate liability in respect of all:

(i) **REDACTED**; and

(ii) **REDACTED**;

incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and

(d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to **REDACTED** of the Estimated Year 1 Charges;

(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to **REDACTED** of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to **REDACTED** of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 26.4(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to **REDACTED** shall be deemed to be references to **REDACTED**

26.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 26.4(c).

26.6 Subject to Clauses 26.1 and 26.3 (*Unlimited Liability*) and Clause 26.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

(a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.3(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

(i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);

(ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and

(iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and

(b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, **REDACTED**;

(ii) in relation to Defaults occurring during any subsequent Contract Year, **REDACTED**

(iii) in relation to Defaults occurring after the end of the Term, **REDACTED**.

Consequential Losses

26.7 Subject to Clauses 26.1, 26.2 and 26.3 (*Unlimited Liability*) and Clause 26.8, neither Party shall be liable to the other Party for:

(a) any indirect, special or consequential Loss; or

(b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

26.8 Notwithstanding Clause 26.7 but subject to Clause 26.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

(a) **REDACTED**;

(b) **REDACTED**;

(c) **REDACTED**;

(d) **REDACTED**;

(e) **REDACTED**; and

(f) **REDACTED**

Conduct of indemnity claims

26.9 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

26.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including

any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

27 INSURANCE

27.1 The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

28 RECTIFICATION PLAN PROCESS

28.1 In the event that:

(a) there is, or is reasonably likely to be, a Delay; and/or

(b) in any Service Period there has been:

(i) a Material KPI Failure; and/or

(ii) a Material PI Failure; and/or

(c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

28.2 If:

(a) the Supplier notifies the Authority pursuant to Clause 28.1 that a Notifiable Default has occurred; or

(b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

28.3 The "**Rectification Plan Process**" shall be as set out in Clauses 28.4 (*Submission of the draft Rectification Plan*) to 28.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

28.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 28.2 (*Notification*). The Supplier shall submit a

draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

28.5 The draft Rectification Plan shall set out:

(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).

28.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

28.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

(a) is insufficiently detailed to be capable of proper evaluation;

(b) will take too long to complete;

(c) will not prevent reoccurrence of the Notifiable Default; and/or

(d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

28.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

28.9 If the Authority consents to the Rectification Plan:

(a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

(b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

29 DELAY PAYMENTS

29.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

29.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

(a) the Authority is entitled to or does terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or

(b) the Delay exceeds the Delay Deduction Period.

30 REMEDIAL ADVISER

30.1 If:

(a) any of the Intervention Trigger Events occur; or

(b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

(i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or

(ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 30.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 30.1 prior to or instead of exercising its right to terminate this Agreement.

30.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

(a) the Remedial Adviser shall be:

(i) a person selected by the Supplier and approved by the Authority; or

(ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on

which the Intervention Notice is given, a person identified by the Authority;

(b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and

(c) any right of the Authority to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

30.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

(a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;

(b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

(c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

(d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or

(e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

30.4 The Supplier shall:

(a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;

(b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;

(c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

(d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and

(e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

30.5 The Supplier shall be responsible for:

(a) **REDACTED**; and

(b) **REDACTED**.

30.6 If:

(a) the Supplier:

(i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(ii) is in Default of any of its obligations under Clause 30.4; and/or

(b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*).

31 STEP-IN RIGHTS

31.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 31 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 22 (*Confidentiality*)). The Step-In Notice shall set out the following:

(a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

(b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;

(c) the date on which it wishes to commence the Required Action;

(d) the time period which it believes will be necessary for the Required Action;

(e) whether the Authority will require access to the Supplier's premises and/or the Sites; and

(f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

31.2 Following service of a Step-In Notice, the Authority shall:

(a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

(b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;

(c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

(d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 31.

31.3 For so long as and to the extent that the Required Action is continuing, then:

(a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

(b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 31.4 shall apply to Deductions from Charges in respect of other Services; and

(c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

31.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

(a) the degradation of any Services not subject to the Required Action; or

(b) the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

31.5 Before ceasing to exercise its step in rights under this Clause 31 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with

the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 31.6.

31.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

31.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

31.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 31, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

(a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or

(b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

32 AUTHORITY CAUSE

32.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

(a) Achieve a Milestone by its Milestone Date;

(b) provide the Operational Services in accordance with the Target Performance Levels; and/or

(c) comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 32):

(i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(A) to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or

(B) to take action pursuant to Clauses 30 (*Remedial Adviser*) or 31 (*Step-In*);

(iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;

(C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and

(D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or

(iv) where the Supplier Non-Performance constitutes a Performance Failure:

(A) the Supplier shall not be liable to accrue Service Credits;

(B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(C) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*); and

(D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

(a) the Supplier Non-Performance;

(b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

(c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

(d) the relief and/or compensation claimed by the Supplier.

32.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

32.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

32.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

32.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 32 shall be implemented in accordance with the Change Control Procedure.

33 FORCE MAJEURE

33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which

results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

33.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated, but the Supplier has failed to do so;

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or

(c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

33.4 Subject to Clause 33.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

33.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

33.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 34.1(c) (*Termination by the Authority*) or Clause 34.3(b) (*Termination by the Supplier*); and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Supplier fails to perform its obligations in accordance with this Agreement:

(i) the Authority shall not be entitled:

(A) during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Remedial Adviser*) and/or Clause 31 (*Step-in Rights*) as a result of such failure;

(B) to receive Delay Payments pursuant to Clause 29 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

(C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

(ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 33.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

34 TERMINATION RIGHTS

Termination by the Authority

34.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

(a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

(b) if a Supplier Termination Event occurs;

(c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

(d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

34.2 Where the Authority:

(a) is terminating this Agreement under Clause 34.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

(b) has the right to terminate this Agreement under Clause 34.1(b) or Clause 34.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

34.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

(a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **REDACTED** after the receipt by the Authority of a notice of non-payment from the Supplier; or

(b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 34.3(b) would result in a Partial Termination, the provisions of Clause 34.4 (*Partial Termination*) shall apply.

Partial Termination

34.4 If the Supplier notifies the Authority pursuant to Clause 34.3(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 34.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

34.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

(a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

(b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

(c) the Supplier shall not be entitled to reject the Change.

35 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

35.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 24 (*Protection of Personal Data*), 26 (*Limitations on Liability*), 35 (*Consequences of Expiry or Termination*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

35.2 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

35.3 If this Agreement is terminated by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.3(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

(a) the Termination Payment; and

(b) the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:

(i) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*)) to (and including) the Termination Date; or

(ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 34.3(a) (*Termination by the Supplier*) to (and including) the Termination Date.

35.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 34.1(b), 34.1(c) and/or 34.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

(a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and

(b) payments in respect of unpaid Charges for Services received up until the Termination Date.

35.5 The costs of termination incurred by the Parties shall lie where they fall if:

(a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 34.1(c) or 34.2(b) (*Termination by the Authority*) or 34.3(b) (*Termination by the Supplier*); or

(b) the Authority terminates this Agreement under Clause 34.1(d) (*Termination by the Authority*).

Payments by the Supplier

35.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

35.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 34.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

35.8 A Milestone Adjustment Payment Notice shall specify:

(a) each CPP Milestone to which it relates;

(b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and

(c) those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),

and may form part of a Termination Notice.

35.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

(a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and

(b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;

(c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:

(i) all relevant Milestone Payments; and

(ii) the Allowable Price of each Retained Deliverable; and

(d) provide the Authority with such supporting information as the Authority may require.

35.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

35.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 35.7:

(a) the Authority shall:

(i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and

(ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

(b) all licences granted pursuant to Clause 17 (*Licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

36 COMPLIANCE

Health and Safety

36.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

(a) all applicable Law regarding health and safety; and

(b) the Health and Safety Policy whilst at the Authority Premises.

36.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

36.3 The Supplier shall:

(a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

(i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and

(iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

(b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

36.4 The Supplier shall comply with the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

37 ASSIGNMENT AND NOVATION

37.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

37.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

(a) any Central Government Body; or

(b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 37.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

38 WAIVER AND CUMULATIVE REMEDIES

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

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

39 RELATIONSHIP OF THE PARTIES

39.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party

to make representations or enter into any commitments for or on behalf of any other Party.

40 PREVENTION OF FRAUD AND BRIBERY

40.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

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

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

40.2 The Supplier shall not during the term of this Agreement:

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

40.3 The Supplier shall during the term of this Agreement:

(a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

(b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

(c) keep appropriate records of its compliance with its obligations under Clause 40.3(a) and make such records available to the Authority on request; and

(d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 40.1 and/or 40.2, or has reason to believe that it has or any of the Supplier Personnel have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).

40.6 If the Supplier is in Default under Clauses 40.1 and/or 40.2, the Authority may by notice:

(a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Agreement.

40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

41 SEVERANCE

41.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

41.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 41.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial*

Negotiation) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 41.3.

42 FURTHER ASSURANCES

42.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

43 ENTIRE AGREEMENT

43.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

43.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.

44 THIRD PARTY RIGHTS

44.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 8.5 (*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 CRTPA.

44.2 Subject to Clause 44.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

44.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

44.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 44.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

45 NOTICES

45.1 Any notices sent under this Agreement must be in writing.

45.2 Subject to Clause 45.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Supplier	**Authority**
Contact	**Regional Director South**	**Commercial Manager**
Address	DHL Global Forwarding (UK) Limited Danzas House, Kestrel Way, Dawley Park,	5th Floor, The Capital Building, 39 Old Hall St, Liverpool L3 9PP

	Hayes, UB3 1HJ	
Email	**REDACTED**	**REDACTED**

45.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 45.2:

(a) Step-In Notices;

(b) Force Majeure Notices;

(c) notices issued by the Supplier pursuant to Clause 34.3 (*Termination by the Supplier*);

(d) Termination Notices; and

(e) Dispute Notices.

45.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 45.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 45.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

45.6 This Clause 45 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

46 DISPUTES

46.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

47 GOVERNING LAW AND JURISDICTION

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

47.2 Subject to Clause 46 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of [***name of the Supplier***] by a director:))))

Signature:

Name (block capitals):

Director

SIGNED for and on behalf of [***name of the Authority***]))))

Signature:

Name (block capitals):

Position: Commercial Deputy Director: Visas, Information and Passports, Commercial Directorate, Corporate Enablers, Home Office

MODEL SERVICES AGREEMENT COMBINED SCHEDULES

MODEL AGREEMENT FOR SERVICES

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MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 1

DEFINITIONS

Definitions

1.1 Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

"Accounting Reference Date"	means in each year the date to which the Supplier prepares its annual audited financial statements;
"Achieve"	(a) in respect of a Test, to successfully pass a Test without any Test Defects; and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Testing Procedures*), and "**Achieved**" and "**Achievement**" shall be construed accordingly;
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	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 with, that body corporate from time to time;
"Allowable Assumptions"	the assumptions set out in Annex 4 of Schedule 7 (*Charges and Invoicing*);
"Allowable Price"	in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula: A – B where: (a) A is an amount equal to the Costs incurred by the Supplier in providing or

developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and

(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

"Allowable Price Adjustment" has the meaning given in Clause 35.8(c) (*Payments by the Supplier*);

"Annual Contract Report" has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);

"Annual Revenue" means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and

(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

"Anticipated Contract Life Profit Margin" has the meaning given in Schedule 7 (*Charges and Invoicing*);

"Approved Sub-Licensee"	any of the following: (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;
"Assets"	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"Associated Person"	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
"Associates"	means, 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;
"Assurance"	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
"ATP Milestone"	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
"Audit"	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights*);
"Audit Agents"	(a) the Authority's internal and external auditors; (b) the Authority'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 Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Audit Rights"	the audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*);
"Authority Assets"	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
"Authority Background IPRs"	(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; (b) IPRs created by the Authority independently of this Agreement; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; but excluding IPRs owned by the Authority subsisting in the Authority Software;
"Authority Cause"	any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is: (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
"Authority 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, and which are:

(i) supplied to the Supplier by or on behalf of the Authority; and/or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Authority is the Data Controller;

"Authority IT Strategy" the Authority's IT policy 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 Change Control Procedure;

"Authority Materials" the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

(a) are owned or used by or on behalf of the Authority; and

(b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

"Authority Premises" premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

"Authority Representative" the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

"Authority Requirements" the requirements of the Authority set out in Schedules Schedule 2 (*Services Description*), Schedule 2.2 (*Performance Indicators*),

	Schedule 2.3 (*Standards*), Schedule 2.4 (*Security Management*), Schedule 2.5 (*Insurance Requirements*), Schedule 6 (*Implementation Plan*), Schedule 8.4 (*Reports and Records Provisions*), Schedule 8.5 (*Exit Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Authority Responsibilities"	the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*);
"Authority Software"	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
"Authority System"	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
"Authority to Proceed" or "ATP"	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"Balanced Scorecard Report"	has the meaning given in Paragraph 1.1(b) of 35.8(b) of Schedule 2.2 (*Performance Levels*);
"Baseline Security Requirements"	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier;
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means the written confirmation from the Board in accordance with Paragraph **Error!**

	Reference source not found. of Schedule 7.4 (*Financial Distress*);
"Breakage Costs Payment"	has the meaning given in Schedule 7.2 (*Payments on Termination*);
"Cabinet Office Markets and Suppliers Team"	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
"Central Government Body"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
"Certificate of Costs"	has the meaning given in Schedule 7 (*Charges and Invoicing*);
"Change"	any change to this Agreement;
"Change Authorisation Note"	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (*Change Control Procedure*);
"Change Control Procedure"	the procedure for changing this Agreement set out in Schedule 8.2 (*Change Control Procedure*);
"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (*Change Control Procedure*);

"Charges"	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7 (*Charges and Invoicing*), including any Milestone Payment or Service Charge;
"Class 1 Transaction"	has the meaning set out in the listing rules issued by the UK Listing Authority;
"CNI"	means Critical National Infrastructure;
"Commercially Sensitive Information"	the information listed in Schedule 4.2 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to: (a) the pricing of the Services; (b) details of the Supplier's IPRs; and (c) the Supplier's business and investment plans; which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
"Compensation for Unacceptable KPI Failure"	has the meaning given in Clause 7.4(a) (*Unacceptable KPI Failure*);
"Compensation Payment"	has the meaning given in Schedule 7.2 (*Payments on Termination*);
"Condition Precedent"	has the meaning given in Clause 4.2 (*Condition Precedent*);
"Confidential Information"	(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates: (i) the Disclosing Party Group; or

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

(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;

(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information which:

(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

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

(iii) 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;

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

(1) performance under this Agreement; or

(2) failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (*Supply Chain Protection*);

"Contract Change"	any change to this Agreement other than an Operational Change;
"Contract Inception Report"	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
"Contract Finder"	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
"Contract Year"	(a) a period of 12 months commencing on the Effective Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the expiry or termination of the Term;
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly;
"Controller"	has the meaning given in the GDPR;

"Corporate Change Event" means:

(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;

(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;

(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;

(d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;

(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;

(f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;

(g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;

(h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made

with creditors of any member of the Supplier Group;

(i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or

(j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

"Corporate Resolution Planning Information" means, together, the:

(a) Group Structure Information and Resolution Commentary; and

(b) UK Public Sector and CNI Contract Information;

"Costs" has the meaning given in Schedule 7 (*Charges and Invoicing*);

"CPP Milestone" a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (*Testing Procedures*);

"Critical National Infrastructure" means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

(a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or

	(b) significant impact on the national security, national defence, or the functioning of the UK;
"Critical Performance Failure"	(a) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
"Critical Service Contract"	means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"CRP Information"	means the Corporate Resolution Planning Information;
"CRTPA"	the Contracts (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 Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	(a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
"Data Subject"	has the meaning given in the DPA;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted

	pursuant to the Data Protection Legislation to their Personal Data;
"Deductions"	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement;
"Default"	any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
"Defect"	(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 Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; 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 Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents

	the relevant Deliverable from meeting its associated Test Success Criteria;
"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;
"Delay Deduction Period"	the period of one hundred (100) days commencing on the relevant Milestone Date;
"Delay Payments"	the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7 (*Charges and Invoicing*);
"Deliverable"	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
"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 this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
"Detailed Implementation Plan"	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6 (*Implementation Plan*);
"Disclosing Party"	has the meaning given in Clause 22.1 (*Confidentiality*);
"Disclosing Party Group"	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central

	Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*);
"**Documentary Deliverables**"	means Deliverables that take the form of Documentation;
"Documentation"	descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), 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 as: (a) is required to be supplied by the Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;

	(c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
"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 by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"DPA"	the Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
"Effective Date"	the later of: (a) the date on which this Agreement is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);
"EIRs"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where: (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a

fault, and notifies the Supplier of the same; or

(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

"Employee Liabilities" 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 related to employment 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 employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

(f) employment claims whether in tort, contract or statute or otherwise;

(g) any investigation relating to employment matters 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;

"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Estimated Year 1 Charges"	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
"Estimated Initial Service Charges"	the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;
"Euro Compliant"	means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data): (a) be able to perform all such functions in any number of currencies and/or in euros; (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other

	European Union body in relation to the euro; (d) incorporate protocols for dealing with rounding and currency conversion; (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (*Exit Management*);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (*Exit Management*);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (*Dispute Resolution Procedure*);
"Expert"	has the meaning given in Schedule 8.3 (*Dispute Resolution Procedure*);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*);
"Extension Period"	a period of 2 years from the end of the Initial Term;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph **Error! Reference source**

	not found. of Schedule 7.4 (*Financial Distress*);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
"Financial Model"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
"Financial Reports"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
"Financial Transparency Objectives"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
"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 any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;
"Force Majeure Notice"	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;

"Former Supplier"	has the meaning given in Schedule 9 (*Staff Transfer*);
"GDPR"	The General Data Protection Regulation (EU) 2016/679;
"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;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
"Goods"	has the meaning given in Clause 9.7 (*Supply of Goods*);
"Group Structure Information and Resolution Commentary"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 1 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Guarantee"	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (*Guarantee*)), or any guarantee acceptable to the Authority that replaces it from time to time;
"Guarantor"	Deutsche Post AG, a company registered in *Germany* with company number Registration

	number HRB 18920, Duns number: 342382733 and whose registered office is at Beteiligungen GmbH, Charles-de-Gaulle-Str. 20 53113 Bonn, Germany;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety Policy"	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"HMRC"	HM Revenue & Customs;
"Impact Assessment"	has the meaning given in Schedule 8.2 (*Change Control Procedure*);
"Implementation Plan"	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 6 (*Implementation Plan*)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6 (*Implementation Plan*) from time to time;
"Implementation Services"	the implementation services described as such in the Services Description;
"Implementation Services Commencement Date"	the date on which the Supplier is to commence provision of the first of the Services, being 01/03/2023
"Indemnified Person"	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
"Independent Control"	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of

processing but does so separately from the Controller providing it with Personal Data;

"Information" 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);

"Initial Term" the period of 5 years from and including the Effective Date;

"Initial Upload Date" means the occurrence of an event detailed in Schedule 8.4 (*Reports and Records Provisions*) 3.1 (*Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

"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 a 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, a 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 fourteen (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, a LLP or a partnership:

(i) a petition is presented (which is not dismissed within fourteen (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 a 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;

"Intellectual Property Rights" or **"IPRs"**

(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 names, 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;

"Intervention Cause" has the meaning given in Clause 30.1 (*Remedial Adviser*);

"Intervention Notice" has the meaning given in Clause 30.1 (*Remedial Adviser*);

"Intervention Period" has the meaning given in Clause 30.2(c) (*Remedial Adviser*);

"Intervention Trigger Event"

(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;

(b) a Default by the Supplier that is materially preventing or materially

	delaying the performance of the Services or any material part of the Services; (c) the Supplier accruing Service Credits which meet or exceed **REDACTED** of the Service Credit Cap; and/or (d) the Supplier not Achieving a Key Milestone within **REDACTED** of its relevant Milestone Date;
"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
"IT"	information and communications technology;
"IT Environment"	the Authority System and the Supplier System;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of processing;
"Key Milestone"	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph **Error! Reference source not found.** of Part C of Schedule 7 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
"Key Performance Indicator"	the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each

	Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (*Key Personnel*);
"Key Roles"	a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*);
"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	any Sub-contractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) **REDACTED** of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
"KPI Failure"	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"KPI Service Threshold"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Law"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory

	body with which the Supplier is bound to comply;
"LED"	Law Enforcement Directive *(Directive (EU) 2016/680)*;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Maintenance Schedule"	shall have the meaning set out in Clause 9.4 (*Maintenance*);
"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"	the management information specified in Schedule 2.2 (*Performance Levels*), Schedule 7 (*Charges and Invoicing*) and Schedule 8 (*Governance*) to be provided by the Supplier to the Authority;
"Material KPI Failure"	(a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold;
"Material PI Failure"	(a) a failure by the Supplier to meet the PI Service Threshold in respect of **REDACTED** or more of the Subsidiary

Performance Indicators that are measured in that Service Period; and/or

(b) a failure by the Supplier to meet the Target Performance Level in respect of **REDACTED** or more of the Subsidiary Performance Indicators that are measured in that Service Period;

"Measurement Period" in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);

"Milestone" an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

"Milestone Achievement Certificate" the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (*Testing Procedures*);

"Milestone Adjustment Payment Amount" in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:

$$A - B$$

where:

(a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and

(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;

"Milestone Adjustment Payment Notice"	has the meaning given in Clause 35.7 (*Payments by the Supplier*);
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Milestone Payment"	a payment identified in Schedule 7 (*Charges and Invoicing*) to be made following the issue of a Milestone Achievement Certificate;
"Milestone Retention"	has the meaning given in Schedule 7 (*Charges and Invoicing*);
"Minor KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"month"	a calendar month and "**monthly**" shall be interpreted accordingly;
"Multi-Party Dispute Resolution Procedure"	has the meaning given in Paragraph 9.1 of Schedule 8.3 (*Dispute Resolution Procedure*);
"Multi-Party Procedure Initiation Notice"	has the meaning given in Paragraph 9.2 of Schedule 8.3 (*Dispute Resolution Procedure*);
"NCSC"	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
"New Releases"	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"	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;
"Non-retained Deliverables"	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the

	relevant CPP Milestone(s) and which are not Retained Deliverables;
"Notifiable Default"	shall have the meaning given in Clause 28.1 (*Rectification Plan Process*);
"Object Code"	software and/or data in machine-readable, compiled object code form;
"Occasion of Tax Non-Compliance"	(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 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 Effective Date or to a civil penalty for fraud or evasion;
"Open Book Data"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
"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;
"Operating Environment"	the Authority System and the Sites;

"Operational Change"	any change in the Supplier's operational procedures which in all respects, when implemented: (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Agreement;
"Operational Service Commencement Date"	in relation to an Operational Service, the later of: (a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
"Operational Services"	the operational services described as such in the Services Description;
"Optional Services"	the services described as such in Schedule 2 (*Services Description*) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (*Optional Services*);
"Optional Services Implementation Plan"	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;

"Other Supplier"	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Outline Implementation Plan"	the outline plan set out at 34.4 of Schedule 6 (*Implementation Plan*);
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 34.2(b) (*Termination by the Authority*) or 34.3(b) (*Termination by the Supplier*) or otherwise by mutual agreement by the Parties;
"Parties" and **"Party"**	have the meanings respectively given on page 1 of this Agreement;
"Performance Failure"	a KPI Failure or a PI Failure;
"Performance Indicators"	the Key Performance Indicators and the Subsidiary Performance Indicators;
"Performance Monitoring Report"	has the meaning given in Schedule 2.2 (*Performance Levels*);
"Personal Data"	has the meaning given in the GDPR;
"Personal Data Breach"	has the meaning given in the GDPR;
"PI Failure"	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
"PI Service Threshold"	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Preceding Services"	has the meaning given in Clause 5.2(b) (*Standard of Services*);
"Processor"	has the meaning given to it under the GDPR;

"Processor Personnel"	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
"Programme Board"	the body described in Paragraph 5 of Schedule 8 (*Governance*);
"Prohibited Act"	(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 this Agreement; (c) an offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); 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"	appropriate technical and organisational measures which may include: 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;
"Project Specific IPRs"	(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement; but shall not include the Supplier Background IPRs or the Specially Written Software;
"Public Sector Dependent Supplier"	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
"Public Sector and CNI Contract Information"	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Publishable Performance Information"	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
"Quality Plans"	has the meaning given in Clause 6.1 (*Quality Plans*);
"Quarter"	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);
"Recipient"	has the meaning given in Clause 22.1 (*Confidentiality*);
"Records"	has the meaning given in Schedule 8.4 (*Reports and Records Provisions*);
"Rectification Plan"	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Rectification Plan Failure"	(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 28.4 (*Submission of the draft Rectification Plan*) or 28.8 (*Agreement of the Rectification Plan*); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 28.7 (*Agreement of the Rectification Plan*); (c) the Supplier failing to rectify a material Default within the later of: (i) 30 Working Days of a notification made pursuant to Clause 28.2 (*Notification*); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;

	(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
"Rectification Plan Process"	the process set out in Clauses 28.4 (*Submission of the draft Rectification Plan*) to 28.9 (*Agreement of the Rectification Plan*);
"Registers"	has the meaning given in Schedule 8.5 (*Exit Management*);
"Reimbursable Expenses"	has the meaning given in Schedule 7 (*Charges and Invoicing*);
"Relevant Authority" or "Relevant Authorities"	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Relevant IPRs"	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRS, the Third Party COTS Software and/or the Third Party COTS IPRs;
"Relevant Preceding Services"	has the meaning given in Clause 5.2(b) (*Standard of Services*);
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State

	for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relief Notice"	has the meaning given in Clause 32.2 (*Authority Cause*);
"Remedial Adviser"	the person appointed pursuant to Clause 30.2 (*Remedial Adviser*);
"Remedial Adviser Failure"	has the meaning given in Clause 30.6 (*Remedial Adviser*);
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
"Request For Information"	a Request for Information under the FOIA or the EIRs;
"Required Action"	has the meaning given in Clause 31.1(a) (*Step-In Rights*);
"Retained Deliverables"	has the meaning given in Clause 35.8(b) (*Payments by the Supplier*);
"Risk Register"	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in 24.17 of Schedule 7 (*Charges and Invoicing*);

"Security Management Plan"	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (*Security Management*) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 (*Security Management*);
"Serious KPI Failure"	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Service Charges"	the periodic payments made in accordance with Schedule 7 (*Charges and Invoicing*) in respect of the supply of the Operational Services;
"Service Continuity Plan"	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) as may be amended from time to time;
"Service Continuity Services"	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Service Credit Cap"	(a) in the period of **REDACTED** from the first Operational Service Commencement Date to occur after the Effective Date, **REDACTED** of the Estimated Initial Service Charges; and (b) during the remainder of the Term, **REDACTED** of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the **REDACTED** in respect of which Service Credits are accrued;
"Service Credits"	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 1 of Part C of Schedule 7 (*Charges and Invoicing*);
"Service Period"	a calendar month, save that: (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in

which the first Operational Service Commencement Date falls; and

(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

"Services" any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2 (*Services Description*);

"Service Transfer Date" has the meaning given in Schedule 9 (*Staff Transfer*);

"Services Description" the services description set out in Schedule 2 (*Services Description*);

"Severe KPI Failure" shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);

"Sites" any premises (including the Authority Premises, the Supplier's premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated; or

(ii) any physical interface with the Authority System takes place;

"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;
"Social Value"	the social, economic or environmental benefits set out in the Authority's Requirements;
"Software"	Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given in Clause 17.1(b) (*Specially Written Software and Project Specific IPRs*);
"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;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning given in Schedule 9 (*Staff Transfer*);
"Standards"	the standards, polices and/or procedures identified in Schedule 2.3 (*Standards*);
"Step-In Notice"	has the meaning given in Clause 31.1 (*Step-In Rights*);
"Step-In Trigger Event"	(a) any event falling within the definition of a Supplier Termination Event;

	(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 31 (*Step-In Rights*) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the Authority to take action to discharge a statutory duty;
"Step-Out Date"	has the meaning given in Clause 31.5(b) (*Step-In Rights*);
"Step-Out Notice"	has the meaning given in Clause 31.5 (*Step-In Rights*);
"Step-Out Plan"	has the meaning given in Clause 31.6 (*Step-In Rights*);
"Strategic Supplier"	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers;
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	any third party with whom:

	(a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
"Sub-processor"	any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
"Subsidiary Performance Indicator"	the performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Successor Body"	has the meaning given in Clause 37.4 (*Assignment and Novation*);
"Supplier Background IPRs"	(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier COTS Background IPRs"	Any embodiments of Supplier Background IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (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 COTS Software"	Supplier Software (including open source software) that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (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 Equipment"	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier Non-COTS Background IPRs"	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
"Supplier Non-COTS Software"	Supplier Software that is not Supplier COTS Software;
"Supplier Non-Performance"	has the meaning given in Clause 32.1 (*Authority Cause*);
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Profit"	has the meaning given in Schedule 7 (*Charges and Invoicing*);
"Supplier Profit Margin"	has the meaning given in Schedule 7 (*Charges and Invoicing*);

"Supplier Representative"	the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives*);
"Supplier Software"	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (*Software*);
"Supplier Solution"	the Supplier's solution for the Services set out in Schedule 4 (*Supplier Solution*) including any Annexes of that Schedule;
"Supplier System"	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
"Supplier Termination Event"	(a) the Supplier's level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which **REDACTED** of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 26.6(a) (*Financial and other Limits*); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Agreement, including pursuant to: (i) Clause 19 (*IPRs Indemnity*); (ii) Clause 40.6(b) (*Prevention of Fraud and Bribery*); and/or

(iii) Paragraph **Error! Reference source not found.** of Schedule 7.4 (*Financial Distress*);

(iv) Paragraph 12 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

(g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;

(h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;

(i) the Supplier committing a material Default under any of the following Clauses:

(i) Clause 5.5(j) (*Services*);

(ii) Clause 24 (*Protection of Personal Data*);

(iii) Clause 23 (*Transparency and Freedom of Information*);

(iv) Clause 22 (*Confidentiality*); and

(v) Clause 36 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 9 (*Staff Transfer*);

(j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (*Benchmarking*);

(k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;

(l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);

(m) a change of Control of the Supplier or a Guarantor unless:

(i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;

(n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);

(o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or 45.4 of Schedule 9 (*Staff Transfer*);

(p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;

(q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or

(r) in relation to Schedule 2.4 (*Security Requirements*):

(i) the Authority has issued two rejection notices in respect of the Security Management Plan under Paragraph 4.5(b) (Part A);

(ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;

(iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing.

(iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,

(v) the Supplier fails to comply with the Incident Management Process.

"Supply Chain Transparency Report"	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (*Reports and Records Provisions*);
"Target Performance Level"	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (*Performance Levels*);
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

"Termination Assistance Notice"	has the meaning given in Paragraph 5 of Schedule 8.5 (*Exit Management*);
"Termination Assistance Period"	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (*Exit Management*);
"Termination Date"	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
"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 this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	the payment determined in accordance with Schedule 7.2 (*Payments on Termination*);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;
"Test Defects"	has the meaning given in Schedule 6.2 (*Testing Procedures*);
"Tests" and "Testing"	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (*Testing Procedure*) and "**Tested**" shall be construed accordingly;
"Test Success Criteria"	has the meaning given in Schedule 6.2 (*Testing Procedures*);
"Third Party Auditor"	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in

	Schedule 8.4 (*Reports and Records Provisions*);
"Third Party Beneficiary"	has the meaning given in Clause 44.1 (*Third Party Rights*);
"Third Party COTS IPRs"	Third Party IPRs that: (a) the supplier makes generally available commercially prior to the date of this Agreement (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 Software (including open source software) that: (a) the supplier makes generally available commercially prior to the date of this Agreement (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 IPRs"	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Non-COTS IPRs"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software;
"Third Party Provisions"	has the meaning given in Clause 44.1 (*Third Party Rights*);
"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 5 (*Software*);

"Transferring Assets"	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (*Exit Management*);
"Transferring Authority Employees"	has the meaning given in Schedule 9 (*Staff Transfer*);
"Transferring Former Supplier Employees"	has the meaning given in Schedule 9 (*Staff Transfer*);
"Transferring Supplier Employees"	has the meaning given in Schedule 9 (*Staff Transfer*);
"Transparency Information"	has the meaning given in Clause 23.1 (*Transparency and Freedom of Information*);
"Transparency Reports"	has the meaning given in Schedule 8.4 (*Reports and Records Provisions*);
"UK"	the United Kingdom;
"UK Public Sector Business"	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
"UK Public Sector / CNI Contract Information"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Unacceptable KPI Failure"	the Supplier failing to achieve the KPI Service Threshold in respect of more than **REDACTED** of the Key Performance Indicators that are measured in that Service Period;
"Unconnected Sub-contract"	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 Sub-contractor"	any third party with whom the Supplier enters into an Unconnected Sub-contract;
"Unrecovered Payment"	has the meaning given in Schedule 7.2 (*Payments on Termination*);
"Updates"	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
"Update Requirement"	means the occurrence of an event detailed in Schedule 8.4 (*Reports and Records Provisions*) 3.1 (*Virtual Library*) which requires the Supplier to update the relevant information hosted on the Virtual Library;
"Upgrades"	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
"Valid"	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"VAT"	value added tax as provided for in the Value Added Tax Act 1994;
"VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Virtual Library"	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.4 (*Reports and Records Provisions*); and
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2

SCHEDULE 2.1

SERVICES DESCRIPTION

Services Description

[ISD Requirements, Appendix 1 Redacted]

[ISD Future Requirements, Appendix 2 Redacted]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.2

PERFORMANCE LEVELS

Performance Levels

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Available"	has the meaning given in Paragraph 13.1 of Part B of 4;
"End User"	any person authorised by the Authority to use the IT Environment and/or the Services;
"Help Desk"	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
"Non-Available"	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
"Performance Monitoring Report"	has the meaning given in Paragraph 1.1(a) of (b);
"Performance Review Meeting"	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 1.5 of Part B;
"Repeat KPI Failure"	has the meaning given in Paragraph 3.1 of Part A;
"Satisfaction Survey"	has the meaning given in Paragraph 18.1 of Part B of Annex 1;
"Service Availability"	has the meaning given in Paragraph 14 of Part B of Annex 1;
"Service Downtime"	any period of time during which any of the Services are not Available; and
"System Response Time"	has the meaning given in Paragraph 15.1 of Part B of Annex 1.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

1.1 40.6 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.

1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with 34.3.

1.3 Service Credits shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2 SERVICE POINTS

2.1 Not used

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".

Related KPI Failures

3.2 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period.

4 PERMITTED MAINTENANCE

4.1 The Supplier shall provide prior notification at least 4 weeks in advance of any Service Downtime for maintenance. The Supplier shall agree with the Authority a plan for any scheduled downtime for maintenance with the required advance notice.

5 SERVICE CREDITS

5.1 Schedule 7 (*Charges and Invoicing*) sets out the mechanism by which Service Credits shall be calculated.

5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to 35.7, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

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

(a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the "**Performance Monitoring Report**"); and

(b) a report created by the Supplier to the Authority's senior responsible officer which summarises the Supplier's performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the "**Balanced Scorecard Report**").

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format specified by the Authority and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

(a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods including Financial YTD;

(b) a summary of all Performance Failures that occurred during the Service Period;

(c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;

(d) which Performance Failures remain outstanding and progress in resolving them;

(e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;

(f) the status of any outstanding Rectification Plan processes, including:

(i) whether or not a Rectification Plan has been agreed; and

(ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

(g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;

(h) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

(i) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;

(j) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;

(k) the status of any Contract Change Notes in progress;

(l) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

(m) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods and Financial YTD;

(n) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;

(o) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

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

Balanced Scorecard Report

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

(a) financial indicators;

(b) the Target Performance Levels achieved;

(c) behavioural indicators;

(d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;

(e) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;

(f) Milestone trend chart, showing performance of the overall service ;

(g) sustainability and energy efficiency indicators, for example energy consumption and recycling performance; and

(h) Social Value (as applicable).

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

1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):

(a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;

(b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and

(c) be attended by the Supplier Representative and the Authority Representative.

1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

2 PERFORMANCE RECORDS

2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance

with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

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

ANNEX 1: KEY PERFORMANCE INDICATORS

PART A: KEY PERFORMANCE INDICATORS

The Key Performance Indicators and Service Levels that shall apply to the Operational Services are set out below:

12. Key Performance Indicators

Product / Service	Service Level	Service Credit / Action to take if Supplier fails SLA	For reference: Requirement ID
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**

REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**

REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	○ **REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**

REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**

PART B: DEFINITIONS

13. AVAILABLE

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

(a) End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and

(b) the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and

(c) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

14. SERVICE AVAILABILITY

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

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

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

14.2 When calculating Service Availability in accordance with this Paragraph1.2:

(a) Service Downtime arising due to unapproved maintenance that is carried out by the Supplier shall be subtracted from the total number of hours in the relevant Service Period;

15. RESPONSE TIMES

15.1 The "**System Response Time**" is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

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

16. HELP DESK RESPONSE TIMES

16.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated

response or placed into a queuing system shall be deemed not to have been answered.

16.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of (i) of this Schedule.

17. FIX TIMES

17.1 The "**Fix Time**" of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and "**Resolution**" means in relation to a Service Incident either:

(a) the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or

(b) the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.

17.2 Fix Times for Severity 3 Service Incidents, Severity 4 Service Incidents and Severity 5 Service Incidents shall be measured in Operational Hours.

[Worked example: if the Operational Hours for a fault are 0800-1800, then the clock stops measuring Fix Time at 1800 in the evening and restarts at 0800 the following day).]

17.3 Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.

17.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Authority on Fix Times as part of the Performance Monitoring Report.

17.5 For the purposes of this Paragraph 17, the following expressions shall have the meanings set opposite them below:

"Operational Hours"	In relation to any Service, the hours for which that Service is to be operational as set out in Schedule 2 (*Services Description*);
"Service Incident"	a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Performance Indicators;
"Severity 1 Service Incident"	a Service Incident which, in the reasonable opinion of the Authority: (a) constitutes a loss of the Service which prevents a large group of End Users from working;

(b) has a critical impact on the activities of the Authority;

(c) causes significant financial loss and/or disruption to the Authority; or

(d) results in any material loss or corruption of Authority Data;

Non-exhaustive examples:

- a loss of power to a data centre causing failure of Services; or
- a failure of the Services to provide user authentication service;

"Severity 2 Service Incident" a Service Incident which, in the reasonable opinion of the Authority has the potential to:

(a) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available;

(b) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available; or

(c) cause a financial loss and/or disruption to the Authority which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;

Non-exhaustive examples:

- corruption of organisational database tables; or
- loss of ability to update Authority Data.

"Severity 3 Service Incident" a Service Incident which, in the reasonable opinion of the Authority has the potential to:

(a) have a major adverse impact on the activities of the Authority which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Authority; or

(b) have a moderate adverse impact on the activities of the Authority;

Non-exhaustive example:

- inability to access data for a class of customers;

"Severity 4 Service Incident" a Service Incident which, in the reasonable opinion of the Authority has the potential to have a minor adverse impact on the provision of the Services to End Users

Non-exhaustive example:

- inability to access data for a single customer; and

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

Non-exhaustive examples:

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

18. SATISFACTION SURVEYS

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

(a) the assessment of the Supplier's performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or

(b) other suggestions for improvements to the Services.

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

19. VIRTUAL LIBRARY COMPLETENESS

19.1 The Virtual Library shall be complete where all of the information required under Schedule 8.4 (*Reports and Records Provisions*) 3.1 (*Virtual Library*)

has been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.3

STANDARDS

Standards

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

2 GENERAL

2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Authority's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.

2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

4 OPEN DATA STANDARDS & STANDARDS HUB

4.1 The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested

Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at http://standards.data.gov.uk/). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

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

5 TECHNOLOGY ARCHITECTURE STANDARDS

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

6 ACCESSIBLE DIGITAL STANDARDS

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

(a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and

(b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

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

(a) ITIL v4;

(b) ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";

(c) ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";

(d) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and

(e) ISO 22313:2020 “Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301” and, ISO/IEC 27031:2011 and ISO 22301:2019.

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

8 ENVIRONMENTAL REQUIREMENTS

8.1 The Supplier shall comply with the environmental requirements set out in the Annex to this Schedule.

9 HARDWARE SAFETY STANDARDS

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

(a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;

(b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;

(c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and

(d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

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

ANNEX 1: ENVIRONMENTAL REQUIREMENTS

1. DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

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

2. ENVIRONMENTAL REQUIREMENTS

2.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.

2.2 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.

2.3 In performing its obligations under the Agreement the Supplier shall to the reasonable satisfaction of the Authority:

(a) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;

(b) prioritise waste management in accordance with the Waste Hierarchy;

(c) be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;

(d) ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;

(e) inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;

(f) minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and

(g) reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.

2.4 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.

2.5 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.

2.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:

(a) it is a Permitted Item; or

(b) the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.

2.7 The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Agreement and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex.

2.8 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

TABLE A – Prohibited Items

The following consumer single use plastics are Prohibited Items:	**Catering** a. Single use sachets e.g. coffee pods, sauce sachets, milk sachets b. Take away cutlery c. Take away boxes and plates d. Cups made wholly or partially of plastic e. Straws f. Stirrers g. Water bottles
	Facilities a. Single use containers e.g. hand soap, cleaning products b. Wipes containing plastic
	Office Supplies a. Plastic envelopes b. Plastic wrapping for brochures c. Paper or card which is bleached with chlorine
	Packaging a. Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products. b. Single use carrier bags
Authority specific Prohibitions	None
Project specific Prohibitions	None

TABLE B – Permitted Items

Authority Permitted Items	None
Project Specific Permitted Items	None

TABLE C – Sustainability Reports

Report Name	Content of Report	Frequency of Report
Sustainability Impact	a. the key sustainability impacts identified; b. sustainability improvements made; c. actions underway or planned to reduce sustainability impacts; d. contributions made to the Authority's sustainability policies and objectives; e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and f. risks to the Service and Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks.	On the anniversary of the Effective Date
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill.	Before contract award and on the anniversary of the Effective Date.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or

		exemption to carry, store or dispose waste
Greenhouse Gas Emissions	Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses	On the anniversary of the Effective Date
Water Use	Volume in metres cubed.	On the anniversary of the Effective Date
Energy Use	Separate energy consumption figures for: a. assets deployed on the Supplier's site; b. assets deployed on the Authority's site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.	On the anniversary of the Effective Date
Transport Use	a. miles travelled by transport and fuel type, for goods delivered to the Authority's sites; b. miles travelled by staff when visiting the Authority's sites from the Supplier's sites or home; c. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees	on the anniversary of the Effective Date

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.4

SECURITY MANAGEMENT

PART A: SECURITY ASSURANCE

1 Definitions

1.1 In this Schedule:

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

"Cyber Essentials"	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
"Cyber Essentials Plus"	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
"Cyber Essentials Scheme"	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
"Incident Management Process"	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Authority Data, the Authority, the Services and/or users of the Services and which shall be shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in **Error! Reference source not found.**;
"Information Assurance Assessment"	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in **Error! Reference source not found.**;
"Information Management System"	means (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Authority Data; and (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
IRAR	Information Risk Assurance Report
"Information Security Approval Statement"	means confirmation of sign off of the Information Risk Assurance Report (IRAR) issued by the Authority which sets out the information risks which the Supplier has identified as being associated with

using the Information Management System and confirms that:

(a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;

(b) the Authority has accepted the residual risks; and

(c) the Supplier may use the Information Management System to Process Authority Data;

"IT Health Check" has the meaning given in Paragraph 7.1;

"Medium Risk Sub-contractor" means a Sub-contractor that Processes Authority Data, [where that data

(a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Agreement terminates in accordance with Clause 4.1(b); and

(b) does not include Special Category Personal Data];

[**Guidance**: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Agreement.]

"Personal Data Processing Statement" means a document setting out:

(a) the types of Personal Data which the Supplier and/or its Sub-contractors Processes or will Process under this Agreement;

(b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Agreement;

(c) the nature and purpose of such Processing;

(d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Agreement; and

	(e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Agreement against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;
"Process"	means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
"Required Changes Register"	mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;
"Risk Register"	is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Authority for approval in accordance with Paragraph 4;
"Security Management Plan"	means the document prepared by the Supplier using the template in **Error! Reference source not found.**, comprising: (a) the Information Assurance Assessment; (b) the Personal Data Processing Statement; (c) System description (d) Risk assessment (e) Key controls described (f) residual risks and actions
Special Category Personal Data	means the categories of Personal Data set out in article 9(1) of the GDPR;

2 Introduction

2.1 This Schedule sets out:

(a) the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Agreement to ensure the security of the Authority Data and the Information Management System;

(b) the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Authority Data;

(c) The security requirements in Annex 1, with which the Supplier must comply;

(d) the tests which the Supplier shall conduct on the Information Management System during the Term;

(e) the Supplier's obligations to:

(i) return or destroy Authority Data on the expiry or earlier termination of this Agreement; and

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

(iii) report Breaches of Security to the Authority.

3 Principles of Security

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

(a) the Sites;

(b) the IT Environment;

(c) the Information Management System; and

(d) the Services.

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

(a) the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors; and

(b) the security of the Information Management System.

3.3 The Supplier shall:

(a) comply with the security requirements in Annex 1; and

(b) ensure that each Sub-contractor that Processes Authority Data complies with the Sub-contractor Security Requirements.

3.4 The Supplier shall provide the Authority with access to Supplier Personnel responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4 Information Security Approval Statement

4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by 28.1, from the first Operational Services Commencement Date.

4.2 The Supplier may not use the Information Management System to Process Authority Data unless and until:

(a) the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and

(b) the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.

4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Agreement in order to ensure the security of the Authority Data and the Information Management System.

4.4 The Supplier shall prepare and submit to the Authority within [20] Working Days of the date of this Agreement, the Security Management Plan, which comprises:

(a) the Information Assurance Assessment;

(b) the Personal Data Processing Statement;

(c) System description

(d) Risk assessment

(e) Key controls described

4.5 residual risks and actions. The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within [20] Working Days of receipt and shall either issue the Supplier with:

(a) an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data; or

(b) a rejection notice, which shall set out the Authority's reasons for rejecting the Security Management Plan.

4.6 If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within [10] Working Days or such other timescale as agreed with the Authority.

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

(a) access to the Supplier Personnel;

(b) access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Agreement; and

(c) such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

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

5 Compliance Reviews

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

5.2 The Supplier shall notify the Authority within [2] Working Days after becoming aware of:

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

(b) a new risk to the components or architecture of the Information Management System;

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

(d) a change in the threat profile;

(e) a significant change to any risk component;

(f) a significant change in the quantity of Personal Data held within the Service;

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

(h) an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

5.3 Within [10] Working Days of such notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.

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

6 Certification Requirements

6.1 The Supplier shall be certified as compliant with:

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

(b) Cyber Essentials PLUS,

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

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

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

(b) Cyber Essentials PLUS,

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

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

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

(a) securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

(b) are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority or equivalent assurance.

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

6.6 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:

(a) immediately ceases using the Authority Data; and

(b) procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this Paragraph.

(c) The Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7 Security Testing

7.1 The Supplier shall, at its own cost and expense procure and conduct:

(a) testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**"); and

(b) such other security tests as may be required by the Authority,

7.2 The Supplier shall complete all of the above security tests before the Supplier submits the Security Management Plan to the Authority for review in accordance with Paragraph 4; and it shall repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to the Authority for review in accordance with this Paragraph.

7.3 In relation to each IT Health Check, the Supplier shall:

(a) agree with the Authority the aim and scope of the IT Health Check;

(b) promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Authority with a copy of the full report;

(c) in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:

(i) prepare a remedial plan for approval by the Authority (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:

(A) how the vulnerability will be remedied;

(B) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:

(1) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;

(2) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and

(3) within 10 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;

(C) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;

(ii) comply with the Vulnerability Correction Plan; and

(iii) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.

7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.

7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within [2] Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Authority with a copy of the test report and:

(a) propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

(b) where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed

for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.

7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations set out this Schedule and the Agreement.

7.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

8 Security Monitoring and Reporting

8.1 The Supplier shall:

(a) monitor the delivery of assurance activities;

(b) maintain and update the Security Management Plan in accordance with Paragraph 5;

(c) agree a document which presents the residual security risks to inform the Authority's decision to give approval to the Supplier to Process, store and transit the Authority Data;

(d) monitor security risk impacting upon the operation of the Service;

(e) report Breaches of Security in accordance with the approved Incident Management Process;

(f) agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within [20] Working Days of Effective Date.

9 Malicious Software

9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph (b) 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 Authority Data (whilst the Authority 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 Authority when provided to the Supplier; and

(b) by the Authority, in any other circumstance.

10 Breach of Security

10.1 If either party becomes aware of a Breach of Security, it shall notify the other in accordance with the Incident Management Process.

10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

(a) Immediately take all reasonable steps necessary to:

(i) minimise the extent of actual or potential harm caused by such Breach of Security;

(ii) remedy such Breach of Security to the extent possible;

(iii) apply a tested mitigation against any such Breach of Security; and

(iv) prevent a further Breach of Security in the future which exploits the same root cause failure;

(b) as soon as reasonably practicable and, in any event, within 12 consecutive hours, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Agreement, then such remedial action shall be completed at no additional cost to the Authority.

ANNEX 1: SECURITY REQUIREMENTS

1. Security Classification of Information

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

2. End User Devices

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

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

3. Networking

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

4. Personnel Security

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

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

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

4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.

4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.

4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Authority Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Authority Data.

4.7 The Supplier shall ensure that the training provided to Supplier Staff under paragraph 1.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Authority Data ("phishing").

5. Identity, Authentication and Access Control

5.1 The Supplier shall operate an access control regime to ensure:

(a) all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and

(b) all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.

5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.

5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

6. Data Destruction or Deletion

6.1 The Supplier shall:

(a) prior to securely sanitising any Authority Data or when requested the Supplier shall provide the Government with all Authority Data in an agreed open format;

(b) have documented processes to ensure the availability of Authority Data in the event of the Supplier ceasing to trade;

(c) securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority;

(d) securely destroy in a manner agreed with the Authority all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as agreed by the Authority; and

(e) implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. Audit and Protective Monitoring

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

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

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

8. Location of Authority Data

8.1 The Supplier shall ensure that neither they nor any of their Sub-contractors Process Authority Data outside the United Kingdom without the prior written consent of the Authority, which may be subject to conditions.

9. Vulnerabilities and Corrective Action

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

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

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

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

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

(a) seven (7) days after the public release of patches for those vulnerabilities categorised as ‘Critical’;

(b) thirty (30) days after the public release of patches for those vulnerabilities categorised as ‘Important’; and

(c) sixty (60) days after the public release of patches for those vulnerabilities categorised as ‘Other’.

9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:

(a) the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

(b) the application of a ‘Critical’ or ‘Important’ security patch adversely affects the Supplier’s ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

(c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. Secure Architecture

10.1 The Supplier shall design the Information Management System in accordance with:

(a) the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main;

(b) the NCSC "Bulk Data Principles", a copy of which can be found at https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main; and

(c) the NSCS "Cloud Security Principles", a copy of which can be found at: https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles and which are summarised below:

(i) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;

(ii) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;

(iii) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;

(iv) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;

(v) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;

(vi) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;

(vii) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;

(viii) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that

appropriate security controls are in place with its Sub-contractors and other suppliers;

(ix) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority's use of the Service;

(x) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;

(xi) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;

(xii) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;

(xiii) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors; and

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

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

1. Application of Annex

1.1 This Annex applies to all Sub-contractors that Process Authority Data.

1.2 The Supplier must:

(a) ensure that those Sub-contractors comply with the provisions of this Annex;

(b) keep sufficient records to demonstrate that compliance to the Authority; and

(c) ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Authority Data.

2. Designing and managing secure solutions

2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles https://www.ncsc.gov.uk/collection/cyber-security-design-principles, or equivalent depending on the location of subcontractor.

2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to the Authority on the Authority's request, or equivalent depending on the location of subcontractor.

3. Data Processing, Storage, Management and Destruction

3.1 The Sub-contractor must not Process any Authority Data outside the United Kingdom. The Authority may permit the Sub-contractor to Process Authority Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.

3.2 The Sub-contractor must securely erase any or all Authority Data held by the Sub-contractor when requested to do so by the Authority; and securely destroy all media that has held Authority Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Authority.

4. Personnel Security

4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at https://www.gov.uk/government/publications/government-baseline-personnel-security-standard or equivalent depending on the location of subcontractor.

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

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

5. End User Devices

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

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

6. Networking

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

7. Patching and Vulnerability Scanning

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

8. Third Party Sub-contractors

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

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

ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE

Security Management Plan Template (Assurance)

International Secure Delivery

1. Executive Summary

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

2. System Description

2.1 Background

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

2.2 Organisational Ownership/Structure

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

2.3 Information assets and flows

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

2.4 System Architecture

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

2.5 Users

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

2.6 Locations

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

2.7 Test and Development Systems

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

2.8 Key roles and responsibilities

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

3. Risk Assessment

3.1 Assurance Scope

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

3.2 Risk appetite

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

3.3 Business impact assessment

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

3.4 Risk assessment

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

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Residual risk level
R1	*Internet attackers could hack the system*	*Medium*	*The service systems are exposed to the internet via the web portal*	*Very low*
R2	*Remote attackers could intercept or disrupt information crossing the internet*	*Medium*	*File sharing with organisations across the internet*	*Very low*

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Residual risk level
R3	*Internal users could maliciously or accidentally alter bank details*	*Medium-High*	*Users bank details can be altered as part of the normal business function*	*Low*

3.5 Controls

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

See below examples of the Key control areas:

- Information security organisation and governance – organisation of information security including roles and responsibilities
- Risk Assessment and management – approach to Information security, risk assessment methodology and process
- Human resources security – screening/vetting, training and awareness, induction, terms and conditions of employment, management responsibilities, disciplinary process and termination of employment.
- Information security policies and processes
- Mobile device security and remote working
- Asset management
- System Access control – user, and privileged users, 'need to know principles', access management, authentication, user responsibilities
- Cryptography controls
- Physical security – secure area, perimeter, physical access/entry controls, secure offices, rooms, secure areas and equipment
- Operations security – operating procedures and responsibilities, change management, separation of development, test and operational environments
- System security – malware protection, backups, logging and monitoring, operating software, technical vulnerability management, control of software, system audit controls, patching, protective monitoring arrangements, configuration and change management Major Hardware and Software and end of support dates

Major Hardware and Software and end of support dates

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

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

- Communications Security – network security management, network controls, segregation of networks, information transfer, confidentiality agreements
- Managing subcontractors – security arrangements and agreements, monitoring of subcontractors.
- Security Incident Management – process, procedures, responsibilities, investigations, remediation/corrective actions. Communication across business. How and when incidents will be reported to the Authority/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.
- Compliance – audit arrangements, reviews, monitoring Residual risks and actions

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

3.6 Residual risks and actions

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

4. Personal Data Processing Statement

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

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

<Any certifications relied upon should have their certificates included>

6. Annex B. Cloud Security Principles assessment

<A spreadsheet may be attached>

Annex C. Latest ITHC report and Vulnerability Correction Plan MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.5

INSURANCE REQUIREMENTS

1 OBLIGATION TO MAINTAIN INSURANCES

1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (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.

1.3 The Insurances shall be taken out and maintained with insurers who are:

(a) of good financial standing;

(b) appropriately regulated;

(c) regulated by the applicable regulatory body and is in good standing with that regulator; and

(d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.

1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

2.1 Without limiting the other provisions of this Agreement, the Supplier shall:

(a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services 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;

(b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

(c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

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 Insurances.

3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 EVIDENCE OF INSURANCES

4.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5 CANCELLATION

5.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.

6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

6.4 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 shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess **[REDACTED]** relating to or arising out of the provision of the Services or this Agreement 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 Authority) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

7. Insured

7.1 The Supplier

1. Interest

1.1 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:

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 0) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

1. Limit of indemnity

Neither Party excludes or limits its liability in respect of any one occurrence, the number of occurrences being unlimited in respect of products and pollution liability.

1. Territorial limits

Not applicable

1. Period of insurance

1.1 From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

1. Cover features and extensions

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

1. Principal exclusions

1.1 War and related perils.

1.2 Nuclear and radioactive risks.

1.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

1.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

1.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

1.6 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.

1.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

1.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

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

PART D: ADDITIONAL INSURANCES

None

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

Authority Responsibilities

1 INTRODUCTION

1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2 (*Services Description*) and Schedule 4 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross referenced in the table in Paragraph 3.

1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

2.1 The Authority shall:

(a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2 (*Services Description*) and Schedule 4 (*Supplier Solution*));

(b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;

(c) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Implementation Plan;

(d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and

(e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

3 SPECIFIC OBLIGATIONS

3.1 The Authority shall, in relation to this Agreement perform the Authority's responsibilities identified as such in this Agreement the details of which are set out below:

Document	Location (Paragraph)
[NOT APPLICABLE]	***[NOT APPLICABLE]***

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4

SCHEDULE 4.1

SUPPLIER SOLUTION

[Not Applicable]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
1	11/01/2023	Pricing Template DHL Response	Initial 5 year contract period, plus 2 further optional 12 month extension periods
2	11/01/2023	On line questionnaire via Home Office eSourcing Portal	Initial 5 year contract period, plus 2 further optional 12 month extension periods
3	11/01/2023	Notified Key Sub-contractors and List of notified Sub-contractors	Initial 5 year contract period, plus 2 further optional 12 month extension periods
4	11/01/2023	Key Personnel	Initial 5 year contract period, plus 2 further optional 12 month extension periods
5	11/01/2023	Security Management Plan	Initial 5 year contract period, plus 2 further optional 12 month extension periods
6	11/01/2023	Financial amounts or percentages in respect of any negotiated limitations of liability or exclusions of liability	Initial 5 year contract period, plus 2 further optional 12 month extension periods
7	11/01/2023	Key Performance Indicators KPI 1 and KPI 2	Initial 5 year contract period, plus 2 further optional 12 month extension periods

8	11/01/2023	Schedule 7.1 - Annex 1 – Table 1 – Accept and Deliver Passports Internationally	Initial 5 year contract period, plus 2 further optional 12 month extension periods
9	11/01/2023	Schedule 7.1 -Annex 1 – Table 2 – Accept and Deliver Supporting Documents Internationally	Initial 5 year contract period, plus 2 further optional 12 month extension periods
10	11/01/2023	Schedule 7.1 - Annex 1 – Table 3 - Collect items from overseas locations and deliver to HMPO in the UK	Initial 5 year contract period, plus 2 further optional 12 month extension periods
11	11/01/2023	Schedule 7.1 - Annex 1 – Table 4 Additional Services	Initial 5 year contract period, plus 2 further optional 12 month extension periods

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

Notified Key Sub-Contractors

1 In accordance with Clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.

2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
REDACTED					

REDACTED _

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.4

THIRD PARTY CONTRACTS

Third Party Contracts

1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.

2 The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
Not Applicable		

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 5

SOFTWARE

Software

1 THE SOFTWARE

1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

1.2 The Parties agree that they will update this Schedule regularly, and in any event no less than every 6 (six) 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

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
Not Applicable at contract signature date							

3 THIRD PARTY SOFTWARE

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 at contract signature							

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

[Supplier letterhead]

[insert Authority name and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

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

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

1 the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "**Appendix**") on the terms of the licences identified in the second column of the Appendix (the "**Licences**"); and

2 notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.4(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [*name of the Supplier*]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [***date***] 20

BETWEEN:

(1) **[*insert name*]** of [*insert address*] (the "**Sub-licensee**"); and

(2) **[*insert name*]** of [*insert address*] (the "**Supplier**" and together with the Supplier, the "**Parties**").

WHEREAS:

(A) [*insert name of Authority*] (the "**Authority**") 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 Authority.

(B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the "**Sub-licence**").

(C) It is a requirement of the Contract that, before the Authority 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" means:

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

(i) the Supplier; or

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

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and

development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority 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:

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

(b) 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

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

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

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

1.2 In this Agreement:

(a) a reference to any gender includes a reference to other genders;

(b) the singular includes the plural and vice versa;

(c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

(d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

(e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

(f) references to Clauses are to clauses of this Agreement.

1. Confidentiality Obligations

1.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

(a) treat all Confidential Information as secret and confidential;

(b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

(c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

(d) not transfer any of the Confidential Information outside the United Kingdom;

(e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

(f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

(g) upon the expiry or termination of the Sub-licence:

(i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

1. Permitted Disclosures

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

(a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and

(b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

(c) have agreed to terms similar to those in this Agreement.

1.2 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.

1.3 Before making a disclosure pursuant to Clause .2, the Sub-licensee shall, if the circumstances permit:

(a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

(b) ask the court or other public body to treat the Confidential Information as confidential.

1. General

1.1 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.

1.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

(a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

(b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

(c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

1.3 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.

1.4 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.

1.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to **REDACTED**

1.6 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.

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

1.8 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.

1. Notices

1.1 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 .2.

1.2 Any Notice:

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

[*Address*]

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

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

[*Name of Organisation*]
[*Address*]

Attention: [ ]

1. Governing law

1.1 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 Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

1.2 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:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6

SCHEDULE 6.1

IMPLEMENTATION AND TRANSITION

DEFINITIONS

"Implementation Plan"	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 6 (*Implementation Plan*)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (*Implementation and Transition*) from time to time. The Implementation Plan is a word document that describes in detail the approach to be taken to deliver a successful implementation of the Service and covers all aspects of the implementation project from contract award and project initiation through to Service and associated system Go-Live (Live Service Commencement). The Plan is supported by a separate project Gantt Chart that details all the implementation activities.
"Transition Plan"	The Transition Plan is a word document that describes the approach to be taken to manage the successful Go-Live/Live Service Commencement of the Service in order to avoid service disruption or degradation. It focusses on the activities required in the days leading up to and on the Go-Live day for the Service and associated systems, as well as the subsequent period of early life support for the Service. The Plan should be supported by a separate project Gantt Chart.
"Transition run-book"	The Transition "run-book" is a detailed list of step-by-step activities, with timings and ownership, that are necessary pre-requisite entry criteria to, and for the actual Go-Live of the Service, and associated systems.

“Transition”	The final phase of activity that ensures that each element of an Existing Service or a New Service that has been developed can be introduced safely and efficiently into live operation
“Transition Activities”	The tasks and activities essential to the success of Transition together with tasks and activities that mitigate risks and other adverse impacts

IMPLEMENTATION AND TRANSITION

1 INTRODUCTION

1.1 This Schedule, which shall be read in conjunction with ITT Appendix 4 (Implementation, Testing and Transition):

(a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and

(b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate;

(c) defines the process, requirements and obligations for the preparation and implementation of the Transition Plan, Gantt and Run-Book and

(d) identifies the associated Deliverables and timeline to support cut-over to Live Service Commencement and the Early Life Support period;

(e) defines the Supplier's requirements and obligations.

2 OUTLINE IMPLEMENTATION PLAN

2.1 The deliverables and milestones for the Outline Implementation Plan is set out in 34.4 and in the Documentary Deliverable Descriptions as detailed in Schedule 6.2 and ITT Appendix 4.

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

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

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

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

(a) details the overall implementation of the solution with content as set out in the appropriate Document Deliverable Description (ITT Appendix 4;

(b) incorporates all of the Milestones and Milestone Dates set out in Annex 1 and clearly identifies the Critical Path including subcontractor activities;

(c) includes (as a minimum) the Supplier's proposed timescales in respect of iterations of the following for each of the Milestones:

(i) the completion of each design document;

(ii) the completion of the build phase;

(iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and

(iv) training and roll-out activities;

(d) clearly outlines all the steps required to implement the Milestones to be achieved in Mobilisation and Design, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements which will be developed iteratively;

(e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and

(f) is produced using a software tool as specified, or agreed by the Authority

(g) Is supported by a detailed Gantt chart capturing all the implementation activities with clear Work Breakdown Structure (WBS), timings, dependencies, and resource allocation.

3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:

(a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

(i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;

(ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and

(iii) any other work in progress in relation to the Detailed Implementation Plan; and

(b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

(a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

3.5 If the Authority rejects the draft Detailed Implementation Plan:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.6 Once the Authority approves the Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

4.1 Following the approval of the Detailed Implementation Plan by the Authority:

(a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 3 months starting 3 months from the Effective Date;

(b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

(c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and

(d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Project Steering Group (as defined in Schedule 8 (*Governance*).

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

(a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and

(b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).

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

5 TRANSITION

5.1 Transition to Live Service, including from the Incumbent Supplier to the Supplier shall be determined in accordance with ITT Appendix 4.

6 GOVERNMENT REVIEWS

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

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

A Milestone	B Deliverables required for each Milestone	C Assumed Duration (Working Days)	D Proposed Milestone Dates	E Dependencies; Authority Responsibilities; Assumptions	F Link to Authority to Proceed
MOBILISATION	• REDACTED				
DESIGN	• REDACTED				
BUILD	• REDACTED				
ACCEPTANCE & ASSURANCE	• REDACTED				
READINESS FOR SERVICE	• REDACTED •				
SERVICE COMMENCEMENT	• REDACTED				
IN-SERVICE SUPPORT	REDACTED				

REDACTED

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6.2

TESTING PROCEDURES

Testing Procedures

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Component"	any constituent parts of the infrastructure for a Service, hardware or Software;
"Defect Review Board" (DRB)	a meeting to track and prioritise all the defects raised in testing and ensure the correct resolution in a timely manner. See Annex 6;
"Deliverable"	means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
"Deliverable Description"	means a document describing a Deliverable, the format and composition of which shall be in accordance with the project and programme management methods specified in Schedule 2.3 (Standards);
"Documentary Deliverables"	means Deliverables that take the form of Documentation;
"Material Test Defect"	a Test Defect of Severity Level 1 or Severity Level 2;
"Severity Level"	the level of severity of a Test Defect, the criteria for which are described in Annex 1;
"Test Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
"Test Defect"	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
"Test Defect 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 Defects as set out in the relevant Test Plan;
"Test Defect Management Log"	a log for the recording of Test Defects as described further in Paragraph 44;

"Test Plan"	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
"Test Reports"	the completion reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 4;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
"Test Traceability Matrix" (TTM)	maps the test cases to the Authority requirements;
"Test Witness"	any person appointed by the Authority pursuant to Paragraph 43; and
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in this Schedule.

2 RISK

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

(a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or

(b) affect the Authority's right subsequently to reject:

(i) all or any element of the Deliverables to which a Test Certificate relates; or

(ii) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:

(a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;

(b) the Services are implemented in accordance with this Agreement; and

(c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3 TESTING OVERVIEW

3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The Supplier shall not submit any Deliverable for Testing:

(a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

(b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

(c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Defect Management Log.

3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case, no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

4.2 The final Test Strategy shall include:

(a) an overview of how Testing will be conducted in accordance with the Implementation Plan. This will include Test stages and slides;

(b) the process to be used to capture and record Test results and the categorisation of Test Defects;

(c) the method for mapping the expected Test results to the Test Success Criteria;

(d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Defects;

(e) the procedure to be followed to sign off each Test;

(f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Defect Management Log, and a sample plan for the resolution of Test Defects;

(g) the names and contact details of the Authority's and the Supplier's Test representatives;

(h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;

(i) the technical environments required to support the Tests; and

(j) the procedure for managing the configuration of the Test environments.

5 TEST PLANS

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

5.2 Each Test Plan shall include as a minimum:

(a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;

(b) a detailed procedure for the Tests to be carried out, including:

(i) the timetable for the Tests, including start and end dates;

(ii) the Testing mechanism;

(iii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;

(iv) the mechanism for ensuring the quality, completeness and relevance of the Tests;

(v) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

(vi) the process which the Authority will use to review Test Defects and the Supplier's progress in resolving these in a timely basis;

(vii) the Test Schedule;

(viii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

(c) the process for escalating Test Defects from a re-test situation to the taking of specific remedial action to resolve the Test Defect.

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

6 TEST SUCCESS CRITERIA

The Test Success Criteria for:

(a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Annex 4, to be reviewed and agreed with the Authority ; and

(b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

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

7.2 Each Test Specification shall include as a minimum:

(a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;

(b) a plan to make the resources available for Testing;

(c) Test scripts;

(d) Test pre-requisites and the mechanism for measuring them; and

(e) expected Test results, including:

(i) a mechanism to be used to capture and record Test results; and

(ii) a method to process the Test results to establish their content.

8 TESTING

8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.

8.3 The Supplier shall provide formal Test updates daily during Test execution and weekly when no testing is occurring.

8.4 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.

8.5 The Authority may raise and close Test Defects during the Test witnessing process. Any defect closures must be evidenced by the supplier and agreed by HMPO in a Defect Review Board.

8.6 The Supplier shall provide to the Authority in relation to each Test:

(a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

(b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.7 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

(a) an overview of the Testing conducted;

(b) identification of the relevant Test Success Criteria that have been satisfied;

(c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

(d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

(e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and

(f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing;

(g) The status of any defects raised during Test execution.

9 TEST DEFECTS

9.1 Where a Test Report identifies a Test Defect, the Parties shall agree the classification of the Test Defect using the criteria specified in (c) and the Test Defect Management Log maintained by the Supplier shall log Test Defects reflecting the Severity Level allocated to each Test Defect.

9.2 The Supplier shall be responsible for maintaining the Test Defect Management Log and for ensuring that its contents accurately represent the current status of each Test Defect at all relevant times. The Supplier shall make the Test Defect Management Log available to the Authority weekly at a minimum or before any Defect Review Board .

9.3 The Authority shall confirm the classification of any Test Defect 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 Defect, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10 TEST WITNESSING

10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

10.3 The Test Witnesses:

(a) shall actively review the Test documentation;

(b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Defect may be closed or whether the relevant element of the Test should be re-Tested;

(c) shall not be involved in the execution of any Test;

(d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;

(e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;

(f) may raise Test Defects on the Test Defect Management Log in respect of any Testing; and

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

11 TEST QUALITY AUDIT

11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.

11.2 The focus of the Testing Quality Audits shall be on:

(a) adherence to an agreed methodology;

(b) adherence to the agreed Testing process;

(c) adherence to the Quality Plan;

(d) review of status and key development issues; and

(e) identification of key risk areas.

11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

11.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.

11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.

11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:

(a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

(b) subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12 OUTCOME OF TESTING

12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Defects.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

(a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Defects;

(b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority 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 Defect and re-submit the Deliverables (or the relevant part) to Testing; or

(c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

(a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

(b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7 (*Charges and Invoicing*).

13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

(a) the applicable Test Defects; and

(b) any other reasons for the relevant Milestone not being Achieved.

13.4 If there are Test Defects but these do not exceed the Test Defects Threshold, then provided there are no Material Test Defects, the Authority shall issue a Milestone Achievement Certificate.

13.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*) and the Authority shall refuse to issue a Milestone Achievement Certificate where:

(a) there is one or more Material Test Defect(s); or

(b) the information required under Schedule 8.4 (*Reports and Records Provisions*) Annex 3 (*Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

13.6 If there are Test Defects which exceed the Test Defects Threshold but there are no Material Test Defects, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Defects in accordance with an agreed Rectification Plan provided that:

(a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and

(b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST DEFECTS – SEVERITY LEVELS

1. Severity Level 1 Test Defect: **a Test Defect that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;**

2. Severity Level 2 Test Defect: **a Test Defect for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:**

   1.1 causes a Component to become unusable;

   1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

   1.3 has an adverse impact on any other Component(s) or any other area of the Services;

1. Severity Level 3 Test Defect: a Test Defect which:

   1.1 causes a Component to become unusable;

   1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

   1.3 has an impact on any other Component(s) or any other area of the Services;

   but for which, as reasonably determined by the Authority, there is a practicable workaround available;

1. Severity Level 4 Test Defect: **a Test Defect which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and**

1. Severity Level 5 Test Defect: **a Test Defect that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services**

ANNEX 2: TEST CERTIFICATE

To: [***NAME OF SUPPLIER***]

FROM: [***NAME OF AUTHORITY***]

[***Date***]

Dear Sirs,

TEST CERTIFICATE

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

We refer to the agreement (the "**Agreement**") relating to the provision of the Services between the [***name of Authority***] (the "**Authority**") and [***name of Supplier***] (the "**Supplier**") dated [***date***].

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

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

OR

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

**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

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

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: [***NAME OF SUPPLIER***]

FROM: [***NAME OF AUTHORITY***]

[***Date***]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

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

We refer to the agreement (the "**Agreement**") relating to the provision of the Services between the [***name of Authority***] (the "**Authority**") and [***name of Supplier***] (the "**Supplier**") dated [***date***].

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

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

OR

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

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

acting on behalf of [***Authority***]

ANNEX 4: TEST SUCCESS CRITERIA

1. Tests to be Achieved in order to Achieve the ATP Milestone

Test	Pre-conditions*	Test Success Criteria
[*List all Tests relating to ATP Milestone*]		

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria
	[List all Tests relating to CPP Milestone Charge No.]	

ANNEX 5: TESTING AND ASSURANCE PROCEDURES FOR DOCUMENTARY DELIVERABLES

1. Introduction to Assurance Procedures for Documentary Deliverables

1.1 The Supplier shall ensure that all Documentary Deliverables are identified in the relevant Assurance Plan including the timing of their delivery and review.

1.2 The Assurance Procedures for Documentary Deliverables are designed to enable the Authority to review draft Documentary Deliverables produced by the Supplier against agreed Assurance Criteria, and for the Authority to satisfy itself of the contents of such drafts subject to any required changes being made.

1.3 Where a third party, would reasonably be considered to be in a position to provide or receive useful and/or necessary input in a Documentary Deliverable, the Supplier shall consult such third party regarding its drafting.

1.4 The Assurance Procedures for Documentary Deliverables shall commence with agreement of the Deliverable Description and associated Review Plan for the Documentary Deliverable between the Authority and the Supplier in accordance with paragraph 2.6, which sets out the Assurance Criteria that the Documentary Deliverable must meet in order to achieve assurance.

1.5 Agreement of Deliverable Description for Documentary Deliverables:

1.5.1 Where a Documentary Deliverable must be put forward for assurance by the Authority, the Supplier shall develop a draft Deliverable Description in the format specified at Annex 1 to this Schedule 5 and shall make the draft Deliverable Description available to the Authority for review in accordance with the Review Plan.

1.5.2 The Authority shall review the draft Deliverable Description in order to determine whether it is in the format specified at Annex 1 to this Schedule 5 and whether the Assurance Criteria contained within the Deliverable Description reflect the objective of the Documentary Deliverable.

1.5.3 The Authority shall undertake this review of the draft Deliverable Description, and shall notify the Supplier of the outcome of the review within 10 Working Days of the Authority receiving the draft Deliverable Description, or within such other period as may be agreed between the Parties.

1.5.4 Where the draft Deliverable Description meets the relevant Assurance Criteria, the Authority shall notify its agreement of the Deliverable Description in writing to the Supplier within 10 Working Days of receiving the same.

1.5.5 Where the draft Deliverable description does not meet the relevant Assurance Criteria, the Authority shall notify the Supplier, specifying the reasons why the draft has not been agreed. In this event, the Supplier shall liaise with the Authority to understand the Authority's concerns. Following this, the Supplier shall complete the necessary changes and shall issue a revised draft Deliverable Description, with all the changes clearly highlighted, to the Authority for review and the above steps repeated. The timescales for revisions to draft Deliverable Descriptions are to be agreed between the Authority and Supplier in the Review Plan, as detailed in paragraph 2.8.2.

1.6 Key Roles in Reviewing Documentary Deliverables:

1.6.1 For each Documentary Deliverable review, the Authority and the Supplier shall each appoint a suitably qualified and authorised representative to manage the assurance of each draft Documentary Deliverable.

1.6.2 Where appropriate, the Authority may decide to involve third parties in the review and such third parties will be made aware of their obligations of confidentiality by the Authority and shall be subject to such reasonable confidentiality undertakings as the Supplier may reasonably require. In this event, and subject to the provisions of Clause 41, the Authority may share draft Documentary Deliverables with such third parties, and may invite them to participate in review meetings, but will ensure that any written comments are channelled through the Authority's appointed lead role. For the purposes of a Compensation Event in respect of this paragraph 1.5 an Authority Cause shall include a cause attributable to such third parties.

1.7 Agreement of Review Plan for Documentary Deliverables:

1.7.1 the Parties shall agree (as soon as is reasonably practicable) a Review Plan, which shall be consistent with:

(a) the overall timescale for development and approval of the Documentary Deliverable, as set out in the relevant Assurance Plan; and

(b) the agreed Authority Responsibilities.

1.7.2 The Review Plan shall record the following dates:

(a) the date of delivery of the first draft of the Documentary Deliverable;

(b) the date by which the Authority will notify the Supplier of the outcome of its review of the first draft of the Documentary Deliverable and provide any review comments;

(c) the date by which the Parties will meet to review the Authority's comments;

(d) the date by which the Supplier shall submit a revised draft Documentary Deliverable;

(e) the date by which the Authority shall check the revised draft; and

(f) the planned date for the issue of the Assurance Certificate.

1.8 Review Procedure for Documentary Deliverables:

1.8.1 the Parties shall conduct the review in accordance with the Review Plan and the timescales specified therein.

1.8.2 the Supplier shall produce and issue by the date of delivery of the first draft of the Documentary Deliverable a complete draft Documentary Deliverable for review by the Authority, in accordance with the Review Plan.

1.8.3 the Supplier shall not submit the draft Documentary Deliverable for review by the Authority without first verifying that it:

(a) is in accordance with the format, scope and Assurance Criteria specified in the applicable Deliverable Description;

(b) is clearly written, in language that those parties who will need to refer to the document should be able to understand;

(c) does not refer to any document not provided to, or in the possession of, the Authority unless the Parties have previously agreed that such document is not required to be provided;

(d) effectively draws upon the necessary expertise and Industry Best Practice available to the Supplier;

(e) is complete, with an appropriate level of detail and any relevant cross-references; and

(f) has no obvious errors of spelling, grammar, numbering or order, duplications or omissions.

1.8.4 The Authority shall review the draft Documentary Deliverable to objectively determine whether it meets the applicable Assurance Criteria or not and shall notify the Supplier of the outcome of this review, in accordance with the Review Plan.

1.8.5 Where the Authority reasonably determines that the draft meets all the applicable Assurance Criteria, the review shall be concluded at this point, and the Authority shall notify the Supplier of Assurance Success.

1.8.6 Where the Authority rejects a draft Documentary Deliverable, because it does not meet all the applicable Assurance Criteria, the Authority shall specify its reasons for rejection in the form of collated review comments to the Supplier, and the following procedures shall apply:

(a) the Parties shall meet to discuss the Authority's review comments and will seek to agree and document the necessary changes to the draft Documentary Deliverable that are required to achieve Assurance Success;

(b) the Supplier shall produce a revised draft Documentary Deliverable, incorporating all the agreed changes, with the changes clearly highlighted, for review by the Authority in accordance with the Review Plan;

(c) the Authority shall review the revised draft Documentary Deliverable in order to objectively determine whether the agreed changes have been made and whether the revised draft now meets the applicable Assurance Criteria, and shall notify the Supplier of the outcome of this review, in accordance with the Review Plan; and

(d) where, pursuant to paragraph 2.9.6(c), the Authority rejects the revised draft Documentary Deliverable, the Authority shall notify the Supplier of the reasons for its rejection of the draft. In this event the Supplier shall liaise with the Authority to understand the Authority's

concerns and shall complete the necessary changes and shall issue a further revised draft Documentary Deliverable for review. This process shall be repeated until all applicable Assurance Criteria have been met.

1.8.7 The Parties shall inform each other of any inability to meet a date in the Review Plan as soon as it becomes apparent to them. Any consequential impact on the Supplier meeting any Key Milestone date shall be managed through the Change Control Procedure.

1.9 Assurance Success

If the Authority determines that the Documentary Deliverable meets each of the applicable Assurance Criteria, the Authority shall notify the Supplier of Assurance Success in accordance with Clause 9.

1.10 Assurance Failure

If all applicable Assurance Criteria are not met by the Planned Successful Assurance Date, the Authority shall notify the Supplier of the failure to reach Assurance Success and, without prejudice to the Authority's other rights and remedies, the Supplier shall comply with its obligations set out in Schedule 29 (Remedial Plan Process).

1.11 Referenced Documents

Once Assurance Success has been achieved, the title and version reference number of the Documentary Deliverable shall be recorded.

1.12 Additional Assurance Documentation

The Authority reserves the right to request, and the Supplier shall promptly supply, any existing Supplier documentation relevant to the delivery of the Services or a Deliverable. The receipt of such documentation does not constitute acceptance by the Authority of the contents.

Annex 1: Format for Deliverable Description of Documentary Deliverables

DELIVERABLE REFERENCE	
Deliverable Title	
Deliverable Description Version	
Deliverable Description Date	
Project or Programme	
Deliverable Purpose	
Deliverable Scope	
Deliverable Form/Composition	
Derivation of Deliverable	
Assurance Criteria for Deliverable	
Approval of Deliverable	
First Draft Delivery Date for Deliverable	
Planned Successful Assurance Date for Deliverable	

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Allowable Assumptions"	the assumptions set out in Annex 5 of Schedule 7.1 (Charges and Invoicing);
"Certificate of Costs"	a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
"CPI"	Consumer Prices Index (UK) (ONS)
"Effective Date"	commencement date of the contractual services as specified in the contract
"European Standard"	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
"Indexation" and "Index"	the adjustment of an amount or sum in accordance with Paragraph 3 of Part C;
"the Parties"	referring to both the Authority and Supplier
"Service Credits"	a deduction from service charges in respective of penalties referred to in Schedule 2.2
"Supplier Personnel"	the economic operators' employees
"Supporting Documentation"	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable receipts;
"Volume Based Fixed Price"	price shall be calculated by taking the respective contractual unit price and multiplying by the actual volumes, these are adjusted for inflation from year four onwards;

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

1.1 Service Charges shall be calculated using the pricing mechanisms, rates and prices specified in Annex 1 or as more particularly set out in this Schedule.

1.2 Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be the following:

(a) "**Volume Based Fixed Price**" pricing, in which case the provisions of Paragraph 2 shall apply;

2 VOLUME BASED FIXED SERVICE CHARGES

2.1 Service Charges shall be calculated on the basis of the unit costs set out in Table 2 of Annex 1.

2.2 In the event that the volume of any Services fall outside the relevant volume bands set out in Table 2 of Annex 1, the relevant Service Charges shall be calculated in accordance with the existing unit cost.

2.3 The Charge per unit set out in Table 2 of Annex 1 shall be subject to annual Indexation from year 2 onwards.

3 REIMBURSABLE EXPENSES

3.1 Where:

(a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and

(b) the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

3.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

3.3 Except as expressly set out in Paragraph 3.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

(a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

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

PART B: CHARGING MECHANISMS

1 SERVICE CHARGES

1.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the "*Service Charge Trigger Event*" column of Table 1 of Annex 2.

1.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part D.

1.3 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 SERVICE CREDITS

1.1 Service Credits shall be calculated by reference to the number of KPI Failures and the associated financial penalty accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

1.2 For each Service Period:

(a) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$SC = KPIF \times X$

where:

SC is the total Service Credits for the relevant Service

Period;

KPIF is the financial penalty amount associated with each

KPI Failure

X is the frequency of the KPI Failure for the Service

Period

1.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Credits in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

1.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

1.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

2 CHANGES TO CHARGES

Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report)

2.1 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

3 INDEXATION

3.1 Any amounts or sums in this Agreement which are expressed to be "subject to Indexation" shall be adjusted in accordance with the provisions of this Paragraph 3 to reflect the effects of inflation.

3.2 Where Indexation (from contract Year 2 onwards) applies, the relevant adjustment shall be:

(a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an "**adjustment date**"); and

(b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the CPI published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.

3.3 Except as set out in this Paragraph 3, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

4 ALLOWABLE ASSUMPTIONS

4.1 For the purposes of submitting a Compliant Bid response at the ITT stage, there will be no Allowable Assumptions.

5 RISK REGISTER

5.1 The Parties shall review the Risk Register set out in Schedule 8 (*Governance*) from time to time and as otherwise required for the purposes of Schedule 8 (Governance).

PART D: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.

1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall:

(a) comply with the requirements of the Authority's e-invoicing system;

(b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and

(c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.

1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:

(a) the date of the invoice;

(b) a unique invoice number;

(c) the Service Period or other period(s) to which the relevant Charge(s) relate;

(d) the correct reference for this Agreement;

(e) the reference number of the purchase order to which it relates (if any);

(f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;

(g) a description of the Services;

(h) the pricing mechanism used to calculate the Charges (Volume Based Fixed Price);

(i) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;

(j) details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;

(k) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);

(l) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;

(m) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and

(n) where the Services have been structured into separate Service lines, the information at (a) to 22 of this paragraph 1.3 shall be broken down in each invoice per Service line.

1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

1.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system or if that is not possible to:

HOSupplierInvoices@Homeoffice.gov.uk

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

1.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Authority's requirements set out in this Part D, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

1.9 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 payment in 30 days after a reasonable time has passed.

2 PAYMENT TERMS

2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in £ Sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 1: PRICING MECHANISM

The forecast contractual pricing summary for the initial 5 year contract duration is contained in the following table which is based on forecast volumes, the firm unit prices in Tables 1- 4, and a contract start date of 1st March 2023.

Actual contract spend will vary with volumes and start date.

Total Estimated Price Per Year					
22-23	23-24	24-25	25-26	26-27	Total
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**

Above table excludes CPI Increases

Please refer to tables 1-6, included within the Financial Pricing Model for the Contractual Rates, Prices and Pricing Mechanism, and the embedded ITT Price Submission (Appendix 6 - Pricing Template DHL May 2022.

REDACTED

3. TABLE 1: ACCEPT AND DELIVER PASSPORTS INTERNATIONALLY

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
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REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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4. TABLE 2: ACCEPT AND DELIVER SUPPORTING DOCUMENTS INTERNATIONALLY

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
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5. TABLE 3: COLLECT FROM OVERSEAS LOCATIONS AND DELIVER TO HMPO IN THE UK

Geographical Area	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
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REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
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6. TABLE 4: ADDITIONAL SERVICES

Pricing per service

Service	Service Description	Pricing Mechanism	Payment Mechanism	Firm Unit Price (£)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

7. TABLE 5: COLLECTION SERVICES

Price per collection

Collection Services	Service Description	Pricing Mechanism	Payment Mechanism	Firm Unit Price (£)

REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

8. TABLE 6: ACCEPT AND DELIVER ETD'S FOR FCDO

Collection Services	Pricing Mechanism	Payment Mechanism	Estimated Delivery Days	Firm Unit Price (£)
Madrid				
REDACTED	REDACTED	REDACTED		REDACTED
REDACTED	REDACTED	REDACTED		REDACTED
REDACTED	REDACTED	REDACTED		REDACTED
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REDACTED	REDACTED	REDACTED		REDACTED

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

9. TABLE 1: VOLUME BASED SERVICE CHARGES

Index	Volume Based Cost Type	Service Charge Name	Indexation Component	Service Charge Trigger Event	Expiry Trigger	Pricing Mechanism	Payment Frequency
1	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
2	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
3	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
4	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
5	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
6	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I **REDACTED**, Chief Financial Officer of DHL Global Forwarding (UK) Ltd, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the International Secure Delivery (the "**Agreement**") in relation to the following

Delivery of International Secure Delivery Services

10. has been reasonably and properly incurred in accordance with DHL Global Forwarding (UK) Ltd's books, accounts, other documents and records;

11. is accurate and not misleading in all key respects; and

12. is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed **REDACTED**

Position (Director of Finance or equivalent) : Chief Financial Officer

Supplier: DHL Global Forwarding (UK) Ltd,

Address: Ocean House, The Ring, Bracknell, Berkshire, RG12

: RISK REGISTER Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Post-mitigation impact (£)	Forecast Contingency Costs	Owner
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

DHL Risk Register April 2022 - REDACTED

ANNEX 4: FINANCIAL PRICING MODEL & ASSOCIATED DOCUMENTS

PROVIDED AS EMBEDDED DOCUMENTS BELOW

1. Appendix 6 – Pricing Submission Template FINAL

REDACTED

2. Appendix 7 – Pricing Template Guidance V0.1 FINAL

REDACTED

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.2

PAYMENTS ON TERMINATION

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Applicable Supplier Personnel" any Supplier Personnel who:

(a) at the Termination Date:

(i) are employees of the Supplier;

(ii) are Dedicated Supplier Personnel;

(iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and

(b) are dismissed or given notice of dismissal by the Supplier within:

(i) 40 Working Days of the Termination Date; or

(ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

(c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

(d) the Supplier can demonstrate to the satisfaction of the Authority:

(i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;

(ii) are genuinely being dismissed for reasons of redundancy; and

(iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

"Breakage Costs Payment"	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
"Compensation Payment"	the payment calculated in accordance with Paragraph 6;
"Contract Breakage Costs"	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
"Dedicated Supplier Personnel"	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
"Redundancy Costs"	the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration: a) any statutory redundancy payment; and b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
"Request for Estimate"	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment

	and Compensation Payment that would be payable if the Authority exercised its right under Clause 33.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;
"Shortfall Period"	has the meaning given in Paragraph 6.2;
"Termination Estimate"	has the meaning given in Paragraph 11.2;
"Third Party Contract"	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (*Third Party Contracts*);
"Total Costs Incurred"	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;
"Unrecovered Costs"	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;
"Unrecovered Payment"	an amount equal to the lower of: (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and (b) the amount specified in Paragraph 4; and

2 TERMINATION PAYMENT

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

3 BREAKAGE COSTS PAYMENT

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

(a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

(b) are unavoidable, proven, reasonable, and not capable of recovery;

(c) are incurred under arrangements or agreements that are directly associated with this Agreement;

(d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

(e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

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

(a) **REDACTED**.

Redundancy Costs

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

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

Contract Breakage Costs

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

(a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and

(b) the Supplier can demonstrate:

(i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

(ii) have been entered into by it in the ordinary course of business.

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

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

(a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or

(b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

(a) **REDACTED**; and

(b) **REDACTED**.

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

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

(a) the appropriation of Assets, employees and resources for other purposes;

(b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and

(c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those

contracts at the earliest possible date without breach or where contractually permitted.

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

6 COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the net profit reported in the most recent statutory accounts.

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

(a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 16 of **Error! Reference source not found.** of Schedule 7 (*Charges and Invoicing*)) falls short of three hundred and sixty-five (365) days; or

(b) where the Supplier terminates this Agreement pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 365 days,

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

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

(a) **REDACTED** of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

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

8 INVOICING FOR THE PAYMENTS ON TERMINATION

8.1 All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7 (*Charges and Invoicing*).

9 SET OFF

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

10 NO DOUBLE RECOVERY

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

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

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

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

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

11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

(a) be based on the relevant amounts set out in the Financial Model;

(b) include:

(i) details of the mechanism by which the Termination Payment is calculated;

(ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

(iii) such information as the Authority may reasonably require; and

(c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.3

BENCHMARKING

Benchmarking

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

"Good Value" in relation to a Benchmarked Service, that:

(a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and

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

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

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.

2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.

2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in 17.5 or such other organisation as may be agreed in writing between the Parties.

3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.

3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.

3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

4 BENCHMARK REVIEW

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

(a) a proposed timetable for the Benchmark Review;

(b) a description of the information that the Benchmarker requires each Party to provide;

(c) a description of the benchmarking methodology to be used;

(d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;

(e) an estimate of the resources required from each Party to underpin the delivery of the plan;

(f) a description of how the Benchmarker will scope and identify the Comparison Group;

(g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and

(h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.

4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.

4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.

4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft

plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).

4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.

4.8 Once it has received the information it requires, the Benchmarker shall:

(a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;

(b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;

(c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;

(d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;

(e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;

(f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and

(g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

(a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);

(b) any front-end investment and development costs of the Supplier;

(c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

(d) the extent of the Supplier's management and contract governance responsibilities;

(e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 BENCHMARK REPORT

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:

(a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;

(b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;

(c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and

(d) illustrate the method used for any normalisation of the Equivalent Services Data

5.2 The Benchmarker shall act as an expert and not as an arbitrator.

5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3

months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.

5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.

5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.

5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

5.8 On conclusion of the Expert Determination:

(a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:

(i) the Supplier shall immediately implement the relevant changes;

(ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

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

ANNEX 1: APPROVED BENCHMARKERS

To be agreed with DHL when Benchmarking required

ANNEX 2: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

(1) **[*insert name*]** of [***insert address***] (the "**Supplier**"); and

(2) **[*insert name*]** of [***insert address***] (the "**Benchmarker**" and together with the Supplier, the "**Parties**").

WHEREAS:

(A) [insert name of Authority] (the "**Authority**") 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 Authority.

(B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the "**Permitted Purpose**").

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Confidential Information" means:

(a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:

(i) the Supplier; or

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

(b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the

Benchmarker's possession in connection with the Permitted Purpose;

(c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information that:

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

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

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

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

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

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

1.2 In this Agreement:

(a) a reference to any gender includes a reference to other genders;

(b) the singular includes the plural and vice versa;

(c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

(d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

(e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

(f) references to Clauses are to clauses of this Agreement.

1. Confidentiality Obligations

1.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

(a) treat all Confidential Information as secret and confidential;

(b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

(c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;

(d) not transfer any of the Confidential Information outside the United Kingdom;

(e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;

(f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

(g) once the Permitted Purpose has been fulfilled:

(i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

1. Permitted Disclosures

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

(a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and

(b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and

(c) have agreed to terms similar to those in this Agreement.

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

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

1.4 Before making a disclosure pursuant to Clause .3, the Benchmarker shall, if the circumstances permit:

(a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

(b) ask the court or other public body to treat the Confidential Information as confidential.

1. General

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

1.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

(a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;

(b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

(c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.

1.3 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.

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

1.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to **REDACTED**

1.6 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.

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

1.8 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.

1. Notices

1.1 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 .2.

1.2 Any Notice:

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

[*Address*]

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

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

[*Name of Organisation*]

[*Address*]

Attention: [ ]

1. Governing law

1.1 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 Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

1.2 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 Benchmarker*]

Signature: _____ Date:

Name: Position:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.4

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Accounting Reference Date"	means in each year, the date to which each entity in the FDE Group prepares its annual audited financial statements;
"Applicable Financial Indicators"	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 6 of this Schedule;
"Appropriate Accepted Mitigation"	means a mitigation to a Financial Distress Event as agreed between the Parties, as follows: (a) as at the Effective Date, as set out in Annex 2 of this Schedule; and (b) during the term of the Contract, as set out in Paragraph 3.4 of this Schedule. All Appropriate Accepted Mitigations, including any new or amended Appropriate Accepted Mitigations must be documented and recorded in a format and location agreed between the Parties, (for example, in a dedicated and access-controlled area of the Virtual Library);
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
"Credit Rating Level"	means a credit rating level as specified in Annex 1 of this Schedule;
"Credit Rating Threshold"	means the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 3 of this Schedule;
"Financial Distress Event" or "FDE"	means the occurrence of one or more events as listed in Paragraph 3.1 of this Schedule;
"Financial Distress Event Group" or "FDE Group"	means the Supplier, Key Sub-contractors, the Guarantor, the Supplier's ultimate parent undertaking, Key Sub-contractors' ultimate parent undertakings, and the Monitored Suppliers;

"Financial Indicators"	in respect of the Supplier, Key Sub-contractors, the Guarantor, the Supplier's ultimate parent undertaking, the Key Sub-contractors' ultimate parent undertakings, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at Paragraph 5.1 of this Schedule;
"Monitored Suppliers"	means those entities specified at Paragraph 6 of this Schedule;
"Primary Credit Ratings"	means Dun & Bradstreet credit ratings;
"Primary Credit Ratings Agency"	means Dun & Bradstreet;
"Rating Agencies"	means the rating agencies listed in Annex 1 of this Schedule or such other rating agencies as the Authority may decide to use;

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

(a) the long-term Primary Credit Ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 3 of this Schedule; and

(b) either:

(i) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor, Supplier's ultimate parent undertaking, Key Sub-contractors, and Key Subcontractors' ultimate parent undertakings satisfies the Financial Target Thresholds, or

(ii) the relevant Appropriate Accepted Mitigations are in place.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by the Primary Credit Ratings Agency for any entity in the FDE Group, which results in the level of risk being assessed as high or greater than average (and in any event within 5 Working Days of the occurrence of the downgrade). The categorisation of credit ratings by risk level is defined in Annex 1.

2.3 The Supplier shall:

(a) regularly monitor the credit ratings of each entity in the FDE Group with the Primary Credit Ratings Agency;

(b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least quarterly, and update the Financial Indicators when public information becomes available, and in any event, no less than once a year within 285 days after the Accounting Reference Date;

(c) provide regular updates to the Authority on, as a minimum, the Primary Credit Ratings for each entity in the FDE Group;

(d) promptly notify (or shall procure that its auditors promptly notify) the Authority 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).; and

(e) ensure when complying with this Paragraph 2.3 that it complies with the law of England and Wales, including all market regulations and local law that applies to England and Wales.

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:

(a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or

(b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 3 of this Schedule ceases to hold or is unable to provide a Credit Rating for that entity, and the Supplier fails to provide an acceptable explanation to the Authority.

2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3(b) shall:

(a) be a single report with separate sections for each of the FDE Group entities;

(b) contain a sufficient level of information to reasonably enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;

(c) include key financial, explanatory narrative, and other supporting information (including any accounts data that has been relied on) as separate annexes;

(d) be based on the audited accounts or any other publicised financial information for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and

(e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS AND APPROPRIATE ACCEPTED MITIGATIONS

3.1 The following shall be Financial Distress Events, unless an Appropriate Accepted Mitigation is in place:

(a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;

(b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;

(d) an FDE Group entity committing a material breach of covenant to its lenders;

(e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;

(f) any of the following:

(i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than **REDACTED** or obligations under a service contract with a total contract value greater than **REDACTED**;

(ii) non-payment by an FDE Group entity of any financial indebtedness;

(iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;

(iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

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

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

(g) any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold; or

(h) if a previously Appropriate Accepted Mitigation is no longer available for a particular FDE or is no longer sufficient to constitute an Appropriate Accepted Mitigation.

3.2 On the occurrence of an FDE pursuant to Paragraph 3.1(g) to (h):

(a) the Supplier shall:

(i) notify the Authority in accordance with Paragraph 22.3(d) above; and

(ii) provide to the Authority in writing within 10 Working Days or as otherwise agreed between the Parties of the date on which the Supplier first becomes aware of the FDE or of the date on which the Authority has brought the FDE to the Supplier's attention, its proposed mitigation; and

(b) the Parties shall then discuss the proposed mitigation in good faith and the Authority shall, as soon as practicable, either:

(i) agree that the proposed mitigation constitutes an Appropriate Accepted Mitigation; or

(ii) exercise its rights under Paragraph 4 of this Schedule.

3.3 Failure by the Authority to exercise its rights under Paragraph 4 of this Schedule shall constitute acceptance of the Appropriate Accepted Mitigation, unless such failure was due to an act or omission of the Supplier.

3.4 For the purposes of this Paragraph 3 Appropriate Accepted Mitigations include:

(a) For the Supplier:

(i) the existence of a valid Guarantee provided by [a Parent Undertaking] as Guarantor: and

(ii) the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and

(iii) the Supplier's ultimate parent undertaking is not subject to an FDE for which there is no Appropriate Accepted Mitigation.

(b) For Sub-contractors:

(i) The existence of a valid Guarantee provided by [a Parent Undertaking] as Guarantor: and

(ii) the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and

(iii) the Sub-contractor's ultimate parent undertaking is not subject to an FDE for which there is no Appropriate Accepted Mitigation; and

(c) For all entities within the FDE Group:

(i) a mitigation that reduces the level of risk of the FDE to a level acceptable to the Authority. This may include access to sufficient unused credit facilities or other risk mitigations, as listed in the Outsourcing Playbook *'Assessing and Monitoring the Economic and Financial Standing of Suppliers'* Guidance note available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816634/20190710-Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers.pdf.

3.5 All Appropriate Accepted Mitigations including any new or amended Appropriate Accepted Mitigations will be documented and recorded in a format and location agreed between the Parties (for example in a dedicated and access-controlled area of the Virtual Library).

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

4.1 Immediately upon notification by the Supplier of a Financial Distress Event in accordance with Paragraph 22.3(d) (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier) and subject to Paragraph 3, the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 In the event of the first instance within a rolling 3-month period, of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1, the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

(a) rectify such late or non-payment; or

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

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

(a) at the reasonable request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

(b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

(i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing). This draft should be consistent with the Service Continuity Plan required under Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning and

(ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, Guarantor, Key Sub-contractor, Monitored Supplier, and any relevant Parent Undertaking (for the Supplier or a Key Sub-contractor), as the Authority may reasonably require in order to understand the risk to the Services, which may include without limitation forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event and other information that might be price sensitive.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

(a) on a regular basis (which shall not be less than fortnightly):

(i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and

(ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

(b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

(c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

(a) obtaining in advance written authority from Key Sub-contractors, the Guarantor, Monitored Suppliers, and any relevant Parent Undertaking (for the Supplier or a Key Sub-contractor) authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;

(b) agreeing in advance with the Authority, Key Sub-contractors, the Guarantor Monitored Suppliers, and any relevant Parent Undertaking (for the Supplier or a Key Sub-contractor) a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;

(c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include (without limitation) making information available to nominated Authority personnel through confidential arrangements, subject to their consent); and

(d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

5.1 Subject to the calculation methodology set out at Annex 4 of this Schedule, 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 follows:

Financial Indicator	Calculation [1]	Financial Target Threshold:	Monitoring and Reporting Frequency (if different from the default position set out in Paragraph 2.3(b))
1 **The higher of (a) the Operating Margin for the most recent 12-month period and (b) the average Operating Margin for the last two 12-month periods**	***Operating Margin = Operating Profit / Revenue***	**REDACTED**	**REDACTED**
2 **Net Debt to EBITDA Ratio**	***Net Debt to EBITDA ratio = Net Debt / EBITDA***	**REDACTED**	**REDACTED**
3 **Net Debt + Net Pension Deficit to EBITDA ratio**	**Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA**	**REDACTED**	**REDACTED**
4 **Net Interest Cover**	***Net Interest Payable Cover = Earnings Before Interest and Tax / Net Interest Payable***	**REDACTED**	**REDACTED**

5 **Current Ratio**	***Current Ratio = Current Assets / Current Liabilities***	**REDACTED**	**REDACTED**
6 **Net Asset value**	***Net Asset Value = Net Assets***	**REDACTED**	**REDACTED**
7 **Group Exposure Ratio**	***Group Exposure Ratio = Current Assets – Group Assets – Current Liabilities***	**REDACTED**	**REDACTED**
8 **Free Reserve Ratio**	**Free Reserve Ratio = Free Reserves / Unrestricted Expenditure**	**REDACTED**	**REDACTED**

Key: [1] – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

6 MONITORED SUPPLIERS

6.1 Monitored Suppliers shall be designated at contract signature.

6.2 A Monitored Supplier could include any Sub-contractor that is not a key subcontractor, which in the opinion of the Authority, performs (or would perform if appointed) a role:

(a) in the provision of all or any part of the Services that is such that the discontinued provision of that role would be detrimental to the ability of the Supplier to deliver the Services to its established performance standards; and/or

(b) in the provision of all or any part of the Services that is such that the discontinued provision of that role may affect the Supplier's financial stability; and/or

(c) for which it would be difficult for the Supplier to find a replacement Sub-contractor within a reasonable time.

Monitored Supplier	**Applicable Financial Indicators** (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers)
[**COMPLETE AS REQUIRED**]	[**COMPLETE AS REQUIRED**]

7 TERMINATION RIGHTS

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

(a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);

(b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

(c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

8 BOARD CONFIRMATION

8.1 If this Contract has been specified as a Critical Service Contract [under Paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 5 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

(a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or

(b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

This Annex sets out the standard rating scales for each of the Rating Agencies selected. The Authority reserves the right to use other rating scales from other Rating Agencies that are not listed in this Annex.

Rating Agency	Credit Rating Level	Risk level
Standard and Poor's	Credit Rating Level 1 = [AAA] [AA+] [AA] [AA-] [A+] [A] [A-]	Low Risk
	Credit Rating Level 2 = [BBB+] [BBB] [BBB-] [BB+] [BB] [BB-] [B+] [B] [B-]	Greater Than Average Risk
	Credit Rating Level 3 = [CCC] [CC] [C] [D] [NR]	High Risk
Moodys	Credit Rating Level 1 = [Aaa] [Aa] [A]	Low Risk
	Credit Rating Level 2 = [Baa] [Ba] [B]	Greater Than Average Risk
	Credit Rating Level 3 = [Caa] [Ca] [C]	High Risk
Dun and Bradstreet	Credit Rating Level 1 = Failure Score of 51 or above	Low Risk
	Credit Rating Level 2 = Failure Score of 11 to 50	Greater Than Average Risk
	Credit Rating Level 3 = Failure Score of 10 or below	High Risk
Experian	Credit Rating Level 1 = 51 or above	Low Risk
	Credit Rating Level 2 = 26 to 50	Greater Than Average Risk
	Credit Rating Level 3 = 25 or below	High Risk
Companywatch	Credit Rating Level 1 = 36 and above	Low Risk
	Credit Rating Level 2 = 26 to 35	Greater Than Average Risk

	Credit Rating Level 3 = 25 or below	High Risk

As per attached reports from Graydons & Dunn & Bradstreet _-

REDACTED

ANNEX 2: APPROPRIATE ACCEPTED MITIGATIONS

1. As at the Effective Date, the Parties agree that the Appropriate Accepted Mitigation:

   (a) For the Supplier is the existence of a valid Guarantee provided by a Parent Undertaking as Guarantor and the Guarantor is not subject to an FDE for which there is no Appropriate Accepted Mitigation;

ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	**Credit Rating (long term)** *(insert the actual credit rating issued for the entity at the Effective Date)*	**Credit Rating Threshold** *(insert the minimum actual rating (e.g. AA-) or the minimum Credit Rating Level (e.g. Credit Rating Level 3)*
REDACTED	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**
REDACTED	**REDACTED**	**REDACTED**
	[etc.]	[etc.]
REDACTED	**REDACTED**	**REDACTED**
[Key Sub-contractor 1]	[etc.]	[etc.]
[Key Sub-contractor 1 Ultimate Parent]	[etc.]	[etc.]
[etc…]	[etc.]	[etc.]
[Monitored Supplier 1]	[etc.]	[etc.]
[etc…]	[etc.]	[etc.]

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 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
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**
REDACTED	**REDACTED**

ANNEX 5: BOARD CONFIRMATION

Supplier Name: DHL Global Forwarding (UK) Ltd

Contract Reference Number: C8937

The Board of Directors acknowledge the requirements set out at paragraph **Error! Reference source not found.** of Schedule 7.4 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

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

1. that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or

2. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair ……

Signed ……

Date ……

Director ……

Signed ……

Date ……

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Annual Contract Report"	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Audit Agents"	(a) the Authority's internal and external auditors; (b) the Authority'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 Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Contract Amendment Report"	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Final Reconciliation Report"	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Financial Model"	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
"Financial Reports"	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
"Financial Representative"	a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

"Financial Transparency Objectives"	has the meaning given in Paragraph 1 of Part A;
"Material Change"	a Change which: (a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: (i) **REDACTED**; or (ii) **REDACTED**;
"Onerous Contract"	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
"Onerous Contract Report"	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
"Open Book Data"	complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to: (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Services including an analysis showing: (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of

agreed rates against each manpower grade;

(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and

(c) Overheads;

(d) 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;

(e) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and

(f) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

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

(a) **Understanding the Charges**

(i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services

(ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

(b) **Agreeing the impact of Change**

(i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;

(ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

(c) **Continuous improvement**

(i) for the Parties to challenge each other with ideas for efficiency and improvements; and

(ii) to enable the Authority to demonstrate that it is achieving value for money for the taxpayer relative to current market prices,

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

2 OPEN BOOK DATA

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

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

(a) maintain and retain the Open Book Data; and

(b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

(a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;

(b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;

(c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;

(d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.

3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).

3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

(a) the Contract Inception Report on or before the Effective Date; and

(b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided	Purpose
Contract Inception Report	On or before the Effective Date	To demonstrate how charges are calculated from the costs, unit rates and volumes agreed at the time of contract award and to provide a monthly budget baseline for the life of the contract.
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority	As the Contract Inception Report, but revised to include the impact of change. To provide a revised monthly budget for the life of the contract
Quarterly Contract Report	Within 1 month of the end of each Quarter	This report is to be utilised as a financial performance management tool and should provide, inter alia, the following information: Actual costs: Monthly YTD (fiscal year) Full (fiscal) Year forecast All of the above are to be compared to the Contract Inception Report or the Contract Amendment Report as appropriate, to provide a comprehensive analysis of financial performance, including commentaries on cost drivers, excluding margin, generating material variances and accompanied by a separate margin analysis

Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates	This is a full (fiscal) year financial report that provides: Full year actual costs compared to the Contract Inception Report or the Contract Amendment Report as appropriate, accompanied by appropriate commentaries on performance, including commentaries on cost drivers, excluding margin, generating material variances and accompanied by a separate margin analysis. Also to include a full year forecast for the subsequent fiscal year, accompanied by explanations of variances arising from comparison with the Contract Inception Report or the Contract Amendment report, as appropriate.
Final Reconciliation Report	Within 6 months after the end of the Term	To comprise a comprehensive and professional review of the financial performance of the contract, including a separate margin analysis

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

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

1.4 Each Financial Report shall:

(a) be completed by the Supplier using reasonable skill and care;

(b) incorporate and use the same defined terms as are used in this Agreement;

(c) quote all monetary values in pounds sterling;

(d) quote all Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or

equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

(a) being accurate and not misleading;

(b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

(c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and

(d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

(a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;

(b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;

(c) the Final Reconciliation Report is a true and fair reflection of the Costs; and

(d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

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

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

(a) the Costs incurred (or those forecast to be incurred) by the Supplier;

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

2 FINANCIAL MODEL

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

(a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;

(b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant

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

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

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

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

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

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

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

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

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

4 KEY SUB CONTRACTORS

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

4.2 Without prejudice to Paragraph 12 of Part C, the Supplier shall:

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

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

(i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

(ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

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

(a) to verify the integrity and content of any Financial Report;

(b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);

(c) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;

(d) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

(e) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;

(f) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

(g) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;

(h) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

(i) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

(j) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

(k) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

(l) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);

(m) to review the accuracy and completeness of the Registers;

(n) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;

(o) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);

(p) to review the Supplier's compliance with the Standards;

(q) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or

(r) to review the integrity, confidentiality and security of the Authority Data.

1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

(a) all information requested by the Authority within the permitted scope of the audit;

(b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

(c) access to the Supplier System; and

(d) access to Supplier Personnel.

2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.

3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

(a) the resultant audit reports; and

(b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:

(a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default in a timescale specified by the Authority and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

(b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;

(c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:

(i) the amount overpaid;

(ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and

(iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

(d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.6

ANTICIPATED SAVINGS

NOT APPLICABLE

ANTICIPATED SAVINGS

This Schedule defines the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	*[E.g. - Reduction in Service Charges as Service delivery becomes more efficient and effective.* *Benefit realisation is measured against [a 2012/13 baseline.]*	£[amount] per annum NOT APPLICABLE	Contract Years [x] to [y]
2	*[E.g. - Improvements in Authority staff productivity from using more flexible and agile services that match the needs of the business.* *Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2013/14.]*	£[amount] year on year improvement ([x]% productivity increase) NOT APPLICABLE	Contract Years [x] to [y]
3	*[E.g. - Reduced electrical power consumption arising from adoption of new low energy technology.* *Benefit realisation is measured against a 2012/13 baseline.]*	£[amount] per annum NOT APPLICABLE	Contract Years [x] to [y]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8

SCHEDULE 8.1

GOVERNANCE

Governance

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Board Member"	the initial persons appointed by the Authority and Supplier to the Boards as set out in (i) and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
"Boards"	the Service Management Board, Project Steering Group, Contract Change Management Board, Technical Board and Risk Management Board and "**Board**" shall mean any of them;
"Change Management Board"	the body described in Paragraph 8;
"Project Managers"	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
"Project Steering Group "	the body described in Paragraph 5;
"Service Management Board"	the body described in Paragraph 4; and
"Technical Board"	the body described in Paragraph 9.

2 MANAGEMENT OF THE SERVICES

2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the implementation and transition of the Services shall be managed at a day-to-day.

2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 BOARDS

Establishment and structure of the Boards

3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board, the:

(a) Roles of the Authority Board Members;

(b) Roles of the Supplier Board Members;

(c) frequency that the Board shall meet (unless otherwise agreed between the Parties);

(d) location of the Board's meetings; and

(e) planned start date by which the Board shall be established,

shall be as set out in Annex 1.

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

Board meetings

3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

(a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and

(b) that he/she is debriefed by such delegate after the Board Meeting.

3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:

(a) Setting the direction and schedule for Board meetings;

(b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;

(c) chairing the Board meetings;

(d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;

(e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and

(f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.

3.7 The Parties shall ensure, as far as reasonably practicable in a timescale specified by the Authority, that all Boards shall resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that

Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE SERVICE MANAGEMENT BOARD

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

(a) be accountable for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;

(b) report to the Project Steering Group on significant issues requiring decision and resolution during the project stage;

(c) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5 ROLE OF THE PROJECT STEERING GROUP (SG)

5.1 The Supplier shall participate in and support the Project Steering Group

5.2 The Project Steering Group will be chaired by the Project Senior Responsible Owner - a suitably senior representative of the Authority.

The membership of the Project Steering Group will include appropriate representatives from both the Organisation, and Supplier Key Personnel

5.3 The Project Steering Group will meet monthly or at a frequency determined by the Organisation as necessary for appropriate successful management of the project for the implementation of the Services.

5.4 The Project Steering Group shall operate until formal closure of the project for the implementation of the Services, following successful Live Service Commencement of the Services.

5.5 The role of the Project Steering Group is to:

(a) Oversee the implementation and operational delivery and deployment of the Services verifying that it meets Commercial, Legal, Security and Operational requirements and aligns to key HMPO Transformation Delivery milestones.

(b) act as a point of escalation for any issues that cannot be resolved at project or service level review meetings as appropriate for the stage of the contract term

(c) consider and resolve Disputes arising from the implementation of the Services (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance;

(d) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

(e) Direct effective internal and external communication to stakeholders to ensure the achievement of Service benefits.

(f) As stated in Schedule 8.2 Change Control, act as the approval body for Project Changes during implementation of the Services and consider Impact Assessments for formal Change Control.

(g) act as the approval body for all Project Deliverables related to the implementation of the Services.

(h) identify and manage risks relating to the implementation of the Services and

- provide assurance for the Organisation that risks are being effectively managed across the Services, including reporting the 'top 5' risks on a monthly basis;
- accept or reject new risks proposed for inclusion in the Risk Register;
- ratify or refuse requests to close risks on the Risk Register;

5.6 The Steering Group will be supported by a Working Group. Frequency and attendance being ad-hoc to focus on key issues and decisions required which are impacting immediate progress. This will be chaired by a nominated delegate of the SRO.

5.7 The Steering Group will be underpinned by work being undertaken at Working group level. Examples of these are:

- Security Assurance Checkpoints;
- Technical Working Group;
- Commercial Working Group.

Groups will be agreed, including any additional groups, as part of Governance discussions during the various project stages.

5.8 The Project Managers (HMPO and Supplier) and Commercial Manager will provide clear, joint, concise and transparent reports to the SG, monthly, which will cover:

- Performance – using the implementation project Gantt Chart against key milestones;
- Risks, Issues and Blockers – providing background details and on-going activity to resolve;
- Project Change as outlined in Schedule 8.2

- Dependencies – Updates on major issues and potential blockers – with teams responsible for the delivery of key components invited to update the Board directly;

- Key Achievements – highlighting the successful delivery of key phases of the project;

- Team Health – other 'hygiene' factors hindering the delivery or deployment, escalating to the SG for support and possible resolution;

- Finance & Benefits Realisation.

6 ROLE OF THE HMPO ENABLING CHANGE PORTFOLIO BOARD

6.1 The HMPO Enabling Change Portfolio Board shall:

(a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;

(b) be the point of escalation from the Change Management Board, the Project Steering Group during the project stage only, the Design & Technical Board and the Contract & Service Management Board; and

(c) carry out the specific obligations attributed to it in Paragraph **Error! Reference source not found.**.

6.2 The Enabling Change Portfolio Board shall:

(a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;

(b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;

(c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;

(d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and

(e) provide guidance and authorisation to the Change Management Board on relevant Changes.

7 PROJECT CHECKPOINT REVIEW

7.1 The Project Managers (Authority and Supplier) will undertake checkpoint reviews, frequency to be agreed as appropriate to the stage of the project. These reviews will, as a minimum :

- Review progress against plan and critical path
- Review Risks Issues Assumptions and Dependencies (RAID)
- Resource plans

The Terms of Reference will be agreed as appropriate during the implementation project stages.

8 ROLE OF THE CONTRACT CHANGE MANAGEMENT BOARD

8.1 The Contract Change Management Board shall assess the impact and approve or reject all contractual Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Enabling Change Portfolio Board.

8.2 The Contract Change Management Board shall:

(a) analyse and record the impact of all Changes, specifically whether the proposed Change:

(i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;

(ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;

(iii) will raise any risks or issues relating to the proposed Change; and

(iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;

(b) provide recommendations, seek guidance and authorisation from the Programme Board as required; and

(c) approve or reject (close) all proposed Changes.

9 ROLE OF THE TECHNICAL BOARD

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

9.2 The Technical Board shall:

(a) ensure compliance with the Standards;

(b) grant dispensations for variations from such compliance where appropriate;

(c) assure the coherence and consistency of the systems architecture for the Supplier Solution;

(d) monitor developments in new technology and reporting on their potential benefit to the Services;

(e) provide advice, guidance and information on technical issues; and

(f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

10 RISK MANAGEMENT

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

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

(a) the identification and management of risks;

(b) the identification and management of issues; and

(c) monitoring and controlling project plans.

10.3 The Risk Register shall be updated by the Supplier and submitted for review as detailed in this Schedule 8.1

(a)

11 CONTRACT MANAGEMENT MECHANISMS

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

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

(a) the identification and management of risks;

(b) the identification and management of issues; and

(c) monitoring and controlling project plans.

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

12 ANNUAL REVIEW

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

12.2 The meetings shall be attended by key personnel and representatives of the Supplier and appropriate representatives of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Service Management Board

Authority Members of Service Management Board	**REDACTED**
Supplier Members of Service Management Board	**REDACTED**
Start Date for Service Management Board meetings	To be agreed on contract commencement
Frequency of Service Management Board meetings	Monthly
Location of Service Management Board meetings	MS Teams with some face-to-face meetings between HMPO sites. At least one meeting per year will be on DHL premises

Programme Board

Authority members of Programme Board	Not applicable **REDACTED**
Supplier members of Programme Board	
Start date for Programme Board meetings	
Frequency of Programme Board meetings	
Location of Programme Board meetings	

Change Management Board

Authority Members of Change Management Board	Not applicable **REDACTED**
Supplier Members of Change Management Board	
Start Date for Change Management Board meetings	
Frequency of Change Management Board meetings	
Location of Change Management Board meetings	

Technical Board

Authority Members of Technical Board	**REDACTED**
Supplier Members of Technical Board	
Start Date for Technical Board meetings	
Frequency of Technical Board meetings	
Location of Technical Board meetings	

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

Change Control Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Authority Change Manager"	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
"Change Request"	a written request for a Contract Change which shall be substantially in the form of Annex 1;
"Change Communication"	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
"Contract Change"	any change that: (a) has an impact on the business of the Organisation; (b) requires a change to this Agreement; (c) has a direct impact on use of the Services; (d) Has a direct impact on the IT or process of the contracted solution or (d) involves the Organisation in paying any additional Charges or other costs.
"Fast-track Change"	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
"Impact Assessment"	an assessment of a Change Request in accordance with Paragraph 5;
"Impact Assessment Estimate"	has the meaning given in Paragraph 4.3;
"Operational Change"	any change identified by the Supplier to improve operational efficiency of the Services that does not: (a) have an impact on the business of the Organisation; (b) require a change to this Agreement; (c) have a direct impact on use of the Services; or

	(d) involve the Organisation in paying any additional Charges or other costs.
"Project Change"	any change during the Implementation stage of the Service that does not: (a) have an impact on the business of the Organisation; (b) require a change to this Agreement; (c) have a direct impact on use of the Services; or (d) involve the Organisation in paying any additional Charges or other costs.
"Receiving Party"	the Party which receives a proposed Contract Change; and
"Supplier Change Manager"	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes (Contract, Operational or Project).

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 Project Changes shall be processed in accordance with Paragraph 11. If either Party is in doubt about whether a change falls within the definition of a Project Change, then it must be processed as a Contract Change.

2.4 The Parties shall deal with Contract Change as follows:

(a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;

(b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

(c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

(d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;

(e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and

(f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.5 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.6 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

(a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and

(b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.7 The Supplier shall:

(a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and

(b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

(a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

(b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:

(i) such costs are below **REDACTED**

(ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or

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

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

4 CHANGE REQUEST

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

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

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

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

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

(b) The reasonable justification for the request;

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

5 IMPACT ASSESSMENT

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

(a) details of the proposed Change (Contract, Operational or Project) including the reason for the Contract Change; and

(b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;

(c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:

(i) the Services Description, the Performance Indicators and/or the Target Performance Levels;

(ii) the format of Authority Data, as set out in the Services Description;

(iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;

(iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

(d) details of the cost of implementing the proposed Contract Change;

(e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

(f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;

(g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

(h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.

5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

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

(a) be based on the Financial Model;

(b) facilitate the Financial Transparency Objectives;

(c) include estimated volumes of each type of resource to be employed and the applicable rate card;

(d) include full disclosure of any assumptions underlying such Impact Assessment;

(e) include evidence of the cost of any assets required for the Change; and

(f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

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

(a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;

(b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

(c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority

shall approve or reject the proposed Contract Change within 10 Working Days.

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

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

7 SUPPLIER'S RIGHT OF APPROVAL

7.1 Following an Impact Assessment, if:

(a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

(i) materially and adversely affect the risks to the health and safety of any person; and/or

(ii) require the Services to be performed in a way that infringes any Law; and/or

(b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

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

8 FAST-TRACK CHANGES

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

8.2 If:

(a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

(b) both Parties agree the value of each proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed **REDACTED** and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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

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

9 OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

(a) have an impact on the business of the Authority;

(b) require a change to this Agreement;

(c) have a direct impact on use of the Services; or

(d) involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.

9.3 The RFOC shall include the following details:

(a) the proposed Operational Change; and

(b) the time-scale for completion of the Operational Change.

9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 COMMUNICATIONS

10.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or Project Manager or the

Supplier Change Manager as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

11 PROJECT CHANGE PROCEDURE

11.1 Any Project Changes may be implemented by the Supplier or the Organisation without following the Contract Change Control Procedure for proposed Contract Changes provided they do not:

(a) have an impact on the business of the Authority;

(b) require a change to this Agreement;

(c) have a direct impact on use of the Services; or

(d) involve the Authority in paying any additional Charges or other costs.

ANNEX 1: CHANGE REQUEST FORM

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

ANNEX 2: CHANGE AUTHORISATION NOTE

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

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

(b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

(a) shall set out:

(i) the material particulars of the Dispute;

(ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

(b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

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

(a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

(b) if it is served by the Supplier it shall be treated as a Supplier Request,

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

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

(a) first by commercial negotiation (as prescribed in Paragraph 4);

(b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

(c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

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

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

3 EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

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

(a) in Paragraph 4.2(c), 10 Working Days;

(b) in Paragraph 5.2, 10 Working Days;

(c) in Paragraph 6.2, 5 Working Days; and

(d) in Paragraph 7.2, 10 Working Days.

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

4 COMMERCIAL NEGOTIATION

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority and Supplier.

4.2 If:

(a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;

(b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or

(c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

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

5 MEDIATION

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant

request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

(c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court

proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

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

7.3 If the Authority serves a Counter Notice, then:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

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

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

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5(e), (f) and (g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the chair of the arbitral tribunal shall be British;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

(a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

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

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

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

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

(a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or

(b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

(a) the Authority;

(b) the Supplier;

(c) each Related Third Party involved in the Multi-Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together "**Multi-Party Dispute Representatives**").

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

(a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

(b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

(c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

(a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

(b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

(c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

1 TRANSPARENCY REPORTS

1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with 17.4 (once approved, the "**Transparency Reports**").

1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.

1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.

1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.

1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

2.1 The Authority may require any or all of the following reports:

(a) delay reports;

(b) reports relating to Testing and tests carried out under Schedule 12 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

(c) reports which the Supplier is required to supply as part of the Management Information;

(d) annual reports on the Insurances;

(e) security reports; and

(f) Force Majeure Event reports.

3 RECORDS

3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together "**Records**"):

(a) in accordance with the requirements of The National Archives and Good Industry Practice;

(b) in chronological order;

(c) in a form that is capable of audit; and

(d) at its own expense.

3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.

3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:

(a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

(b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4 Virtual Library

4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in in accordance with the requirements outlined in this Schedule.

4.2 The Supplier shall ensure that the Virtual Library is:

(a) capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file

details of all uploaded items including date and time of upload, version number and the name of the uploader;

(b) structured so that each document uploaded has a unique identifier which is automatically assigned;

(c) readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,

(d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);

(e) structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 12 (*Security Management*);

(f) created and based on open standards in Schedule 2.3 (*Standards*); and

(g) backed up on a secure off-site system.

4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Clause 17.1 (*Project Specific IPR*) of this Agreement.

4.4 The Supplier shall upload complete and accurate information specified in Annex 3 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.

4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:

4.6 SupplierQueries@hmpo.gov.ukExcept for notices under Clause 44.4 or items covered by Clause 44.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Agreement, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.

4.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Agreement and the

Supplier shall refer to the applicable clause for further details as to the requirement.

4.8 The Suppler shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.

4.9 Where Access Permission is not listed (in column 6 of the table at Annex 3) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3) from the Initial Upload Date.

4.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:

(a) be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under paragraph 4.10(b) of this Schedule); and

(b) report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.

4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.

4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.

4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.

4.14 In the event of a conflict between any requirement in this Agreement (excluding Annex 3) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Agreement shall prevail.

4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.

4.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.

4.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.

4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: TRANSPARENCY REPORTS

Report category	Content	Format	Frequency
Performance	Daily Figures Report Total number of items received, breakdown of passports/supporting docs	Word	Daily
Performance	Exception Report Tracks the number of items which have corrected examiner errors and which APC they have come from	Word	Daily
Performance	HMPO Denied Parties Rolling Sheet List of shipments on hold due to denied parties	Excel spreadsheet detailing data	Daily
Performance	Erbil Daily Report (IraqPro B) Current number of Erbil Shipments on Hold	Excel	Daily
Performance	Network Updates Report Public holidays in countries and details of delays/issues in country	Word PDF	Daily
Performance	Lost Shipment Incident Report	Word	Ad hoc as arise
Performance	Dip Mail Report including all deliveries made to FCO Ruislip HA4 6EP	Word	Weekly
Performance	VAC / Embassy Proactive Address Error updates	Word	Daily
Performance management	Dashboard report / Overview of contract	Excel spreadsheet detailing data	Monthly
Performance management	Daily numbers through PFS Hayes	Excel spreadsheet detailing data	Monthly
Performance management	Monthly anomalies / Exceptions	Excel spreadsheet detailing data	Monthly
Performance management	Returns	Excel spreadsheet detailing data	Monthly
Performance management	KPI's	Excel spreadsheet detailing data	Monthly
Performance management	Losses/Complaints/Concerns	Excel spreadsheet detailing data	Monthly
Performance management	Countries with contingencies	Excel spreadsheet detailing data	Monthly

Performance management	Monthly Incidents	Excel spreadsheet detailing data	Monthly
Performance management	Presentation pack to include slides representing PM1- PM8 for Monthly Supplier Management Board meeting.	Powerpoint	Monthly
Performance management	HMPO / Supplier loss/destroy compensation claims (copy for info only)	Excel	Monthly
Performance management	Information from Supplier to inform the Monthly Supplier Performance paper	Word	Monthly
Performance management	IDT monthly pulls	Excel Spreadsheet	Monthly
Sub-contractors	Couriers and countries in which they are utilised	Excel spreadsheet	Quarterly
Sub-contractors	Carriers and countries in which they are utilised	Excel spreadsheet	Quarterly
Charges	Invoice detailing the following per service/country: service description quantity per country unit price charged total	As per standard Home Office invoicing system	Monthly
Charges	Service credits	Excel spreadsheet	Monthly
Security	Certification		Annual

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

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

16. **All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.**

17. **All journals and audit trail data referred to in Schedule 12 (Security Management Plan).**

18. **All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.**

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Authority	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
Cl 14.3	Key Personnel	Sch 9.2	Effective Date	On replacement of Key Personnel	Authority
Sch 2.2,Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 2.2, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Authority
Sch 12, Para 4.4	Security Management Plan	Sch 12, **Error! Reference source not found.**	Within 20 Working Days of the date of the Agreement	Regular review and at least annually	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 12, Para 6.1, 6.2 and 6.3	Security certificates	As appropriate and agreed by the Authority	Prior to receiving, storing or processing any Authority Data	-	-
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within fifteen (15) days after policy renewal or replacement	Authority
Cl 22	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor
Cl 15.7	Notified Key Subcontractors	Sch 4.3	Effective Date	On replacement of key subcontractor	Authority
Cl 15.5	Third Party Contracts	Sch 4.4	Effective Date	On appointment of subcontract	Authority
Cl 15.6	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation	Authority
Cl 15.23	Supply chain Transparency Information Reports	Sch 8.4, Annex 4	thirty days prior to the of the end of each financial year	Every twelve (12) months	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl 16,17	Software	Sch 5	Operational Services Commencement Date	Upon Agreement by the Authority to vary the information	Authority
Cl 6.4	Detailed Implementation Plan	Sch 6	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Authority
Sch 6.2, Para 4	Test Strategy	As appropriate and agreed by the Authority	Within 20 Working Days of Effective Date	Upon update to the test strategy	Authority
Sch 6.2, Para 5	Test Plan	As appropriate and agreed by the Authority	20 prior Working Days of relevant test	Upon update to the test plan	Authority
Sch 6.2, Para 8	Test Specification	As appropriate and agreed by the Authority	10 prior Working Days of relevant test	Upon update to the test specification	Authority
Sch 6.2, Para 8	Test Report	As appropriate and agreed by the Authority	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report	Reissue with each retest	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
			5 days for the Final Test Report following the relevant test completion		
Sch 7, Part D Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 7, 24.15	Risk Register	Sch 7, 24.15	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority
Sch 7.3, Para 5	Benchmarking Plan	Sch 7.3	Upon receipt from Benchmarker	Approval of Plan	Authority and Auditor
Sch 7.3, Para 5	Benchmarking report	Sch 7.3	Upon receipt from Benchmarker	Any update	Authority and Auditor
Sch 7.4 Para **Error! Reference source not found.**	Financial Indicator Reports	Sch 7.4 para **Error! Reference source not found.**	As specified in para **Error! Reference source not found.** of Sch 7.4	As specified in para **Error! Reference source not found.** of Sch 7.4	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7.4 Para **Error! Reference source not found.**	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Authority
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed	-	Authority
Sch 7.5, para 1.1	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter	-	Authority
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates	-	Authority
Sch 7.5 Part B, para 1.2	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term	-	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8, Para 3.3	Representation and Structure of boards	Sch 8 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-	Authority
Sch 8, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson	-	Authority
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-	Authority
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.2 Para 5.4	Authority
Sch 8.2, Para 2.7	Update full copy of the Agreement and copy of	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
	annotated version illustrating changes				
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-	Authority
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Authority
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, 17.17	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, 17.17	Authority
Sch 8.5, Para 2.1(a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.5, Para 2.1(b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Authority following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.5, Para 6.7(b)	Authority Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 8.5, Annex 1, Para .3, Para .5 & Para .6	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	-
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Authority
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part B Para 11.2	Sch 8.6, Para 11.8	Authority
Sch 7.4 Para **Error! Reference source not found.**	Board Confirmation	As set out at **Error! Reference source not found.** of Sch 7.4	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Authority
Sch 9, (b), Para .1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch 9, Para .1 A-D	At such intervals as are reasonably requested by the Authority	Authority
Sch 9, Part E, Para .2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Authority and, at the discretion of the Authority, the Replacement Supplier and/or any Replacement Subcontractor

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 9, 5.13, Para .6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date	-	Authority
Sch 9, Part E, Para .7	Payroll and benefits information	As appropriate and agreed by the Authority	Within 5 Working Days following the Service Transfer Date	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor
Sch 9, Annex E1	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 9.2	Key Personnel	Sch 9.2	Effective Date	As amended from time to time	Authority
Sch 11, 0 Para .1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

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

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.5

EXIT MANAGEMENT

Exit Management

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Emergency Exit"	any termination of this Agreement which is a: (a) termination of the whole or part of this Agreement in accordance with Clause 33 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (*Termination Rights*); or (c) wrongful termination or repudiation of this Agreement by either Party;
"Ethical Wall Agreement"	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
"Non-Exclusive Assets"	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
"Ordinary Exit"	any termination of the whole or any part of this Agreement which occurs:

(a) pursuant to Clause 33 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or

(b) as a result of the expiry of the Initial Term or any Extension Period;

"Registers"	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
"Transferable Assets"	those of the Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
"Transferring Contracts	has the meaning given in Paragraph 7.2(b).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

(a) create and maintain a register of all:

(i) Assets, detailing their:

(A) make, model and asset number;

(B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(C) Net Book Value;

(D) condition and physical location; and

(E) use (including technical specifications); and

(ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

(b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit

the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

(c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

(d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

(a) details of the Service(s);

(b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

(c) an inventory of Authority Data in the Supplier's possession or control;

(d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

(e) a list of on-going and/or threatened disputes in relation to the provision of the Services;

(f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and

(g) such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

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

3.3 The Supplier shall:

(a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

(b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

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

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

(a) prepare an informed offer for those Services; and

(b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

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

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

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

5 EXIT PLAN

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

(a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;

(b) complies with the requirements set out in Paragraph 5.2; and

(c) is otherwise reasonably satisfactory to the Authority.

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

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

(a) how the Exit Information is obtained;

(b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;

(c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;

(d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;

(e) the management structure to be employed during the Termination Assistance Period;

(f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;

(g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);

(h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);

(i) a timetable and critical issues for providing the Termination Services;

(j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;

(k) how the Termination Services would be provided (if required) during the Termination Assistance Period;

(l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9 (*Staff Transfer*); and

(m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

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

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

Finalisation of the Exit Plan

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

5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance

with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

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

(a) the date from which Termination Services are required;

(b) the nature of the Termination Services required; and

(c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.

6.2 The Authority shall have:

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

(b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

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

(a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;

(b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for

and conduct of the Services to the Authority and/or its Replacement Supplier;

(c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;

(d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and

(e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.

6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

(a) cease to use the Authority Data;

(b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);

(c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;

(d) return to the Authority such of the following as is in the Supplier's possession or control:

(i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;

(ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;

(iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and

(iv) any items that have been on-charged to the Authority, such as consumables;

(e) vacate any Authority Premises unless access is required to continue to deliver the Services;

(f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:

(i) such information relating to the Services as remains in the possession or control of the Supplier; and

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

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

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

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

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

(a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;

(b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

(c) terminate, enter into or vary any licence for software in connection with the Services.

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

(a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");

(i) which, if any, of:

(A) the Exclusive Assets that are not Transferable Assets; and

(B) the Non-Exclusive Assets,

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

(b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

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

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

(a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

(b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the

Net Book Value of the Transferring Asset less the amount already paid through the Charges.

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

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

(a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

(b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

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

7.7 The Authority shall:

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

(b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

7.9 The Supplier shall indemnify the Authority (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 Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:

(a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and

(b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (*Intellectual Property Rights*) and/or Clause 17 (*Transfer and Licences Granted by the Supplier*).

8 SUPPLIER PERSONNEL

8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9 (*Staff Transfer*) shall apply.

8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.

8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.

8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:

(a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and

(b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.

9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.

9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

(a) the amounts shall be annualised and divided by 365 to reach a daily rate;

(b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

(c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

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

(a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);

(b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

(c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;

(d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;

(e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;

(f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;

(g) providing the Authority with any problem logs which have not previously been provided to the Authority;

(h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;

(i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;

(j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;

(k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration

plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

(l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;

(m) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;

(n) assisting in establishing naming conventions for any new production site;

(o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;

(p) generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;

(q) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;

(r) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;

(s) assisting with the loading, testing and implementation of the production databases;

(t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;

(u) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];

(v) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);

(w) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;

(x) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;

(y) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;

(z) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:

(i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

(ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and

(aa) knowledge transfer services, including:

(i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

(ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and

(iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.4 The Supplier shall:

(a) provide a documented plan relating to the training matters referred to in Paragraph 1.3(k) for agreement by the Authority at the time of termination or expiry of this Agreement;

(b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.3(o), providing skills and expertise of a suitable standard; and

(c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.3(w), providing skills and expertise of a reasonably acceptable standard.

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

1.6 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.3(y) shall include:

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

(b) product information;

(c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;

(d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;

(e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;

(f) details of physical and logical security processes and tools which will be available to the Authority; and

(g) any relevant interface information.

1.7 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 Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

(a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph .7 shall:

(i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

(ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and

(b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

DHL GLOBAL FORWARDING UK LTD

]

ETHICAL WALL AGREEMENT

This Agreement is dated **1st March 2023**

Between

(1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** (the "**Authority**") of 2 Marsham Street, London, SW1P 4DF; and

(2) **DHL GLOBAL FORWARDING (UK) LTD** a company registered in England and Wales under registered number **4056042** whose registered office is at Ocean House, The Ring, Bracknell, Berkshire, RG12 1AN England (the "**Counterparty**").

BACKGROUND

(A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.

(B) The Authority is conducting a procurement exercise for the supply of International Secure Delivery services (the "**Purpose**").

(C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.

(D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.

(E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

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

"**Affiliate**" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

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

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

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

(a) Government Department;

(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency;

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

"**Contract**" means the contract for International Secure Delivery Services dated 1st March 2023 between the Authority and the Counterparty and/or an Affiliate;

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

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

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

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

information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"**ITT Response**" means the tender submitted or to be submitted by the Counterparty in response to an ITT;

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

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

"**Parties**" means the Authority and the Counterparty;

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

"**Purpose**" has the meaning given to it in recital (B) to this Agreement;

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

"**Third Party**" means any person who is not a Party and includes Other Affiliates and Other Bidders.

1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.

1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).

1.4 Reference to persons includes legal and natural persons.

1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.

1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.

1.7 Reference to any gender includes any other.

1.8 Reference to writing includes email.

1.9 The terms "associate", "holding company", "subsidiary", "subsidiary undertaking" and "wholly owned subsidiary" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.

1.10 The words “include” and “including” are to be construed without limitation.

1.11 The singular includes the plural and vice versa.

1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

1. ETHICAL WALLS

1.1 In consideration of the sum of **REDACTED** payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

(a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;

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

(c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause .2.

1.2 The Counterparty shall:

(a) Not assign any of the Conflicted Personnel to the Bid Team at any time;

(b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;

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

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

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

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

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

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

(g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;

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

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

(j) comply with any other action as the Authority, acting reasonably, may direct.

1.3 In addition to the obligations set out in Clause ..1(a) and ..1(c), the Counterparty shall:

(a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;

(b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and

(c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause .3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

1.4 Any breach of Clause .1, Clause .2 or Clause .3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take

such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause .1, Clause .2 or Clause .3.

1.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses .1 and .2 as reasonably requested by the Authority.

1.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses ..1(c) and .2.

1.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses .5 and .6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

1.8 The actions of the Authority pursuant to Clause .4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

1.9 In no event shall the Authority be liable for any bid costs incurred by:

(a) the Counterparty or any Affiliate or Representative; or

(b) any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

1.10 The Counterparty acknowledges and agrees that:

(a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 0; and

(b) in the event of such breach by the Counterparty of any of its obligations in clause 0 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

1. SOLE RESPONSIBILITY

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

1. WAIVER AND INVALIDITY

1.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or

any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

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

1. ASSIGNMENT AND NOVATION

1.1 Subject to clause 1.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

1.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

(a) any Central Government Body; or

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

(c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 0.

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

1. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

1. TRANSPARENCY

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

1. NOTICES

1.1 Any notices sent under this Agreement must be in writing.

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

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

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

	Counterparty	**Authority**
Contact	Regional Director South	Commercial Manager
Address	DHL Global Forwarding	5th Floor, Capital Building, 39 Old Hall St, Liverpool L3 9PP

	(UK) Limited Kestrel Way, Dawley Park, Hayes, UB3 1HJ	
Email	**REDACTED**	**REDACTED**

1.4 This Clause 0 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

1. WAIVER AND CUMULATIVE REMEDIES

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

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

1. TERM

1.1 Each party's obligations under this Agreement shall continue in full force and effect for period of 5 years from the Effective Date.

1. GOVERNING LAW AND JURISDICTION

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

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

Signed by the Authority Name:

Signature:

Position in Authority:

Counterparty Signed by the	Name:
	Signature:
	Position in Counterparty:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART A: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given in Paragraph 2.2(a)(ii);
"Business Continuity Services"	has the meaning given in Paragraph 4.2(b);
"Department"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 7 (seven) days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given in Paragraph 2.2(a)(iii);
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
"Disaster Recovery System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Insolvency Continuity Plan"	has the meaning given in Paragraph 2.2(a)(iv).
"Related Service Provider"	any person who provides services to the Authority in relation to this Agreement from time to time, which persons include as at the Effective Date ;

"Review Report"	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
"Service Continuity Plan"	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

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

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

(b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

(a) be divided into four parts:

(i) Part A which shall set out general principles applicable to the Service Continuity Plan;

(ii) Part B which shall relate to business continuity (the "**Business Continuity Plan**");

(iii) Part C which shall relate to disaster recovery, including and not limited to both Failover and Failback processes (the "**Disaster Recovery Plan**");

(iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the "**Insolvency Continuity Plan**"); and

(b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

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

(a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date

on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

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

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

3.1 Part A of the Service Continuity Plan shall:

(a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;

(b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;

(c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

(d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

(e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;

(f) contain a risk analysis, including:

(i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

(iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;

(iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and

(v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

(g) provide for documentation of processes, including business processes, and procedures;

(h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;

(i) identify the procedures for reverting to "normal service";

(j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

(k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and

(l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

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

(a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;

(b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;

(c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and

(d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan; and

(e) compliance of and alignment to the Authority's Change Management and Control process.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

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

(a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

(b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

(a) address the various possible levels of failures of or disruptions to the Services;

(b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");

(c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and

(d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster in consultation and with the prior consent of the Authority.

5.3 The Disaster Recovery Plan shall include the following:

(a) the technical design and build specification of the Disaster Recovery System;

(b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(i) data centre and disaster recovery site audits;

(ii) backup methodology and details of the Supplier's approach to data back-up and data verification;

(iii) identification of all potential disaster scenarios;

(iv) risk analysis;

(v) documentation of processes and procedures;

(vi) hardware configuration details;

(vii) network planning including details of all relevant data networks and communication links;

(viii) invocation rules;

(ix) Service recovery procedures; and

(x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

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

(d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

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

(f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

(a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

(b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;

(c) plans to manage and mitigate identified risks;

(d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;

(e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and

(f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

(a) on a regular basis and as a minimum once every 6 months;

(b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;

(c) within 14 days of a Financial Distress Event;

(d) within 30 days of a Corporate Change Event; and

(e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:

(a) the findings of the review;

(b) any changes in the risk profile associated with the Services; and

(c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

(a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as possible according to the priority specified by the Authority after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

8.1 The Supplier shall test the Service Continuity Plan in advance of the Operational Service Commencement Date and thereafter on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data

used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:

(a) the outcome of the test;

(b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and

(c) the Supplier's proposals for remedying any such failures.

8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:

(a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could be expected to adversely affect delivery of the Services; and/or

(b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

PART B: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

10.1 This Agreement is not a Critical Service Contract.

10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

11.1 Paragraphs 11 to 13 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.

11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part B:

(a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and

(b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.

11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B:

(a) is full, comprehensive, accurate and up to date;

(b) is split into two parts:

(i) Group Structure Information and Resolution Commentary;

(ii) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at https://www.gov.uk/government/publications/the-outsourcing-playbook and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

(c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;

(d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works

provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

(e) complies with the requirements set out at Annex 1 (Group Structure Information and Resolution Commentary) and Annex 2 (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.

11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:

(a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part B if:

(a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has

elapsed since the Accounting Reference Date on which the CRP Information was based); and

(b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.

11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

(a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph **Error! Reference source not found.** of Schedule 7.4 (*Financial Distress*)

(b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;

(c) within 30 days of the date that:

(i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or

(ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and

(d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:

(i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or

(ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to 7.7 of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

(a) Aa3 or better from Moody's;

(b) AA- or better from Standard and Poors;

(c) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph **Error! Reference source not found.** of Schedule 7.4 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

12 Termination Rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part B and either:

(a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or

(b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

13 Confidentiality and usage of CRP Information

13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and

usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part B and Clause 21.

13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

(a) redacting only those parts of the information which are subject to such obligations of confidentiality

(b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:

(i) summarising the information;

(ii) grouping the information;

(iii) anonymising the information; and

(iv) presenting the information in general terms

13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 1: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY

1. The Supplier shall:

1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.

1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and

1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 and the dependencies between each.

ANNEX 2: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION

1. The Supplier shall:

1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:

(a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;

(b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1(a) of this Annex 2 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or

(c) involve or could reasonably be considered to involve CNI;

1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than **REDACTED** and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.7

CONDUCT OF CLAIMS

1 INDEMNITIES

1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

(a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

(b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;

(c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

(d) the Indemnifier shall conduct the Claim with all due diligence.

1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

(a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

(b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the

Beneficiary in writing that it does not intend to take conduct of the Claim; or

(c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

2.1 With respect to any Claim which the Beneficiary, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

(a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

(b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

MODEL AGREEMENT SERVICES SCHEDULES

SCHEDULE 9

SCHEDULE 9.1

STAFF TRANSFER

Staff Transfer

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Former Supplier"	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"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 Annex D1-Annex D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;
"Notified Sub-contractor"	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Old Fair Deal"	HM Treasury Guidance *"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"* issued in June 1999 including the supplementary guidance *"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"* issued in June 2004;
"Replacement Sub-contractor"	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"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. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
"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 Personnel List or Supplier's Final Supplier Personnel 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 Authority may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
"Statutory Schemes"	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Personnel List"	a list prepared and updated by the Supplier of all Supplier Personnel 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 Authority Employees"	those employees of the Authority 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 Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

(a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including)the Relevant 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 which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;

(b) the breach or non-observance by the Authority before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

(c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

(d) 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:

(i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

(e) a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;

(f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and

(b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

(f) 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:

(i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Supplier or any Sub-contractor 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 Authority Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined

in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant 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 any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4 INFORMATION

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

(b) Old Fair Deal; and/or

(c) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:

(a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

(b) Part D (and its Annexes) to this Staff Transfer Schedule.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

(a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including)the Relevant 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 which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

(b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

(c) 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:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

(d) a failure of the Former Supplier 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 Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

(e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

(f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

(a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and

(b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-

contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;

(f) 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:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Supplier or any Sub-contractor 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 Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant 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 any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

(b) Old Fair Deal; and/or

(c) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 PENSIONS

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

(a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

(b) (c) (and its Annexes) to this Staff Transfer Schedule.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

(b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

(a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made

pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

(b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority 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 Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

3.1 Where in this Part C the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: PENSIONS

1 DEFINITIONS

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

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"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"	(a) 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/or (b) 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**" shall be construed accordingly;
"CSPS"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (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 (ii) or 11 of this Part D);

"Fair Deal Employees" any of:

(a) Transferring Authority Employees;

(b) Transferring Former Supplier Employees; and/or

(c) employees who are not Transferring Authority 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 Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.5 of Parts A or B or paragraph 1.4 of Part C;

(d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)

(e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Authority;

"Fund Actuary" a Fund Actuary as defined in Annex D3 to this Part D;

"LGPS" the scheme as defined in Annex D3 to this Part D; and

"NHSPS" the schemes as defined in Annex D2 to this Part D.

2 PARTICIPATION

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall 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:

(a) 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

(b) subject to paragraph 0 of Annex 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 Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement 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 Sub-contractor) 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 Authority.

3 PROVISION OF INFORMATION

3.1 The Supplier undertakes to the Authority:

(a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;

(b) 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 Authority (such consent not to be unreasonably withheld or delayed); and

(c) 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 this Agreement.

4 INDEMNITIES

4.1 The Supplier shall indemnify and keep indemnified the Authority, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

(a) 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 breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;

(b) 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 Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 5.8 or 11 of this Part D;

(c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

(i) 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 this Agreement;

(ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Agreement; and/or

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

4.2 The indemnities in this Part D and its Annexes:

(a) shall survive termination of this Agreement; and

(b) shall not be affected by the caps on liability contained in Clause 25 (*Limitation of Liability*).

5 DISPUTES

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or 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 Authority and/or the Supplier be referred to an independent Actuary:

(a) who will act as an expert and not as an arbitrator;

(b) whose decision will be final and binding on the Authority and/or the Supplier; and

(c) whose expenses shall be borne equally by the Authority and/or 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 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 43 (*Third Party Rights*) does not apply and that 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 in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, 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 Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

7.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Agreement for material Default in the event that the Supplier:

(a) commits an irremediable breach of any provision or obligation it has under this Part D; or

(b) commits a breach 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 Authority giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS

8.1 Save on expiry or termination of this Agreement, if the employment of any Fair Deal Eligible 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 or shall procure that any relevant Sub-contractor shall:

(a) notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);

(b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and

(c) procure that the employer to which the Fair Deal Eligible 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 Eligible Employees so transferred to the New Employer.

9 PENSION ISSUES ON EXPIRY OR TERMINATION

9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Agreement.

9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement 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 CSPS and/or the relevant Administering Authority and/or the Authority 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 SCHEME ON RELEVANT TRANSFER DATE

10.1 If the terms of any of paragraphs 0 of Annex D2: NHSPS or .1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors 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 Authority.

10.2 Such Broadly Comparable pension scheme must be:

(a) established by the Relevant Transfer Date;

(b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

(c) 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 Authority);

(d) 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 Authority); and

(e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

10.3 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 Sub-contractors shall):

(a) supply to the Authority details of its (or its Sub-contractor'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 seven (7) days after receipt of the certificate;

(b) 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;

(c) 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 Authority (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

(d) 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 Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor'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 Sub-contractors shall) prior to the termination of this Agreement:

(a) 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(c) 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(c) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and

(b) 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(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor 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 Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this paragraph.

11 BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

11.1 If the terms of any of paragraphs .2 of Annex D1: CSPS, .2 of Annex D2: NHSPS and/or .2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors 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 Authority.

11.2 Such Broadly Comparable pension scheme must be:

(a) established by the date of cessation of participation in the Statutory Scheme;

(b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

(c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);

(d) 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 Authority); and

(e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

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 Sub-contractors shall):

(a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate 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 seven (7) days after receipt of the certificate;

(b) 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

(c) where required to do so by the Authority, 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 Authority (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

(d) 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 Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor'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 Sub-contractors shall) prior to the termination of this Agreement 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 Sub-contractor (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 Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this paragraph.

12 RIGHT OF SET-OFF

12.1 The Authority shall have a right to set off against any payments due to the Supplier under this Agreement an amount equal to:

(a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPS or any CSPS Admission Agreement in respect of the CSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

(b) 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 Sub-contractor

or due from any third party under any indemnity, bond or guarantee; or

(c) 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 Sub-contractor 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 Authority shall also have a right to set off against any payments due to the Supplier under this Agreement all reasonable costs and expenses incurred by the Authority as result of Paragraphs 12.1 above.

ANNEX D1: CSPS

1. DEFINITIONS

1.1 In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings:

"CSPS 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 CSPS in respect of the Services;
"CSPS Eligible Employee"	any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;
"CSPS Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
"CSPS"	the Principal Civil Service Pension Scheme 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; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

1. FUTURE SERVICE BENEFITS

1.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS 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 Sub-contractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing

the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

1.2 If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Agreement in accordance with paragraph .1 but the CSPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, 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 5.7 of Part D.

ANNEX D2: NHSPS

1. DEFINITIONS

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

"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 Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal 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: (a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or (b) 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 Authority, 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 Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide 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 Authority, an NHS Body or other employer which participates automatically in the NHSPS; or (b) 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 Authority, 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 fifty per cent (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/Determination or other NHSPS "access" facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal 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 the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
"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 NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is 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

1. MEMBERSHIP OF THE NHSPS

1.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement 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 under this Agreement.

1.2 Where it is not possible for the Supplier and/or any of its Sub-contractors 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:

(a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and

(b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.

1.3 The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.

1.4 The Supplier must ensure (and procure that each of its Sub-contractors (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.

1.5 The Supplier will (and will procure that its Sub-contractors (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.

1.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 0 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (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.

1.7 The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

1. NHS PREMATURE RETIREMENT RIGHTS

1.1 From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (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 Authority, an NHS Body or other employer which participates automatically in the NHSPS.

1. NHS BROADLY COMPARABLE EMPLOYEES

1.1 The Supplier shall (and procure that its Sub-contractors 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. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph .2 below.

1. BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)

1.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.

1.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, 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 the provisions of paragraph 11 of Part D.

1. COMPENSATION

1.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

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

(b) a Broadly Comparable pension scheme,

the Authority may in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor 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 Sub-contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

1.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Agreement under paragraph 7 (*Breach*) of Part D of this Schedule.

1. SUPPLIER INDEMNITIES

1.1 The Supplier must indemnify and keep indemnified the Authority 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 his or her employment rights.

ANNEX D3: LGPS

1. DEFINITIONS

1.1 In this Annex Annex D3: LGPS to Part D: Pensions, the following words have the following meanings:

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
"Administering Authority"	in relation to **the Fund [insert name]**, the relevant administering authority of that Fund for the purposes of the 2013 Regulations;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of the 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 2013 Regulations;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
"LGPS Eligible Employees"	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
"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 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

1. SUPPLIER TO BECOME AN LGPS ADMISSION BODY

1.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Sub-contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement 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 on or before 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 this Agreement.

OPTION 1

1.2 [Any LGPS Fair Deal Employees who:

(a) 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

(b) 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:

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

(d) 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.]

1.3 The Supplier will (and will procure that its Sub-contractors (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.

1. BROADLY COMPARABLE SCHEME

1.1 If the Supplier and/or any of its Sub-contractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph .1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Sub-contractors 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.

1.2 If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with paragraph .1 but the LGPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, 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.

1. DISCRETIONARY BENEFITS

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

1. LGPS RISK SHARING

1.1 Subject to paragraphs .4 to .10, if at any time during the term of this Agreement the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor 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 Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.

1.2 Subject to paragraphs .4 to .9 and .11, if at any time during the term of this Agreement, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor 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 Authority an amount equal to A–B (the "**Refund Amount**") where:

A = 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

B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.

1.3 Subject to paragraphs .4 to .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 Sub-contractor 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 Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.

1.4 The Supplier and any Sub-contractors shall at all times be responsible for the following costs:

(a) 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;

(b) 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;

(c) 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;

(d) 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 Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;

(e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;

(f) any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors 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 Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);

(g) 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 Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;

(h) any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor'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;

(i) the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or

(j) any interest payable under the 2013 Regulations or LGPS Administration Agreement.

1.5 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 Sub-contractors are responsible for in accordance with paragraph .4 above shall be 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 shall be final and binding.

1.6 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 Sub-contractor 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 Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.

1.7 The Supplier shall (or procure that the Sub-contractor shall) notify the Authority in writing within twenty (20) Working Days:

(a) of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and

(b) 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 Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

1.8 Within twenty (20) Working Days of receiving the notification under paragraph .7 above, the Authority shall either:

(a) notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;

(b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or

(c) request a meeting with the Supplier to discuss or clarify the information or evidence provided.

1.9 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 .8 above, the Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

1.10 Any Excess Amount or Exit Payment agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority 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 Sub-contractor.

1.11 Any Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.

1.12 This paragraph 0 shall survive termination of this Agreement.

PART E: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

(a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

(c) the date which is 12 months before the end of the Term; and

(d) receipt of a written request of the Authority at any time (provided that the Authority 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 DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

(a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

(b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs .1 and .2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs .1 and .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 Paragraph ..1(a), ..1(b) and ..1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

(a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel 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 he/she replaces;

(b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) 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 Personnel List;

(e) 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); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

(a) the numbers of employees engaged in providing the Services;

(b) the percentage of time spent by each employee engaged in providing the Services;

(c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 9 (*Staff Transfer*)(as appropriate); and

(d) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor 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, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

(a) the most recent month's copy pay slip data;

(b) details of cumulative pay for tax and pension purposes;

(c) details of cumulative tax paid;

(d) tax code;

(e) details of any voluntary deductions from pay; and

(f) bank/building society account details for payroll purposes.

1. EMPLOYMENT REGULATIONS EXIT PROVISIONS

1.1 The Authority 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 this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority 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 disapplied through operation of regulation 10(2) 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 Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

1.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) 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 Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

1.3 Subject to Paragraph .4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Supplier or any Sub-contractor 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;

(b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees; and/or

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) 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 Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

(d) 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:

(i) 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 on and before the Service Transfer Date; and

(ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or

other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Supplier or any Sub-contractor 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 (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) 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 Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

1.4 The indemnities in Paragraph .3 shall 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 Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

1.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

(a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of

becoming aware of that fact, give notice in writing to the Supplier; and

(b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor 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.

1.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

1.7 If after the 15 Working Day period specified in Paragraph ..5(b) has elapsed:

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

1.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs .5 to .7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph .7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

1.9 The indemnity in Paragraph 1.8:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph ..5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

1.10 If any such person as is described in Paragraph .5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs .5 to .7, such person shall be treated as a Transferring Supplier Employee.

1.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel 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:

(a) the Supplier and/or any Sub-contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-contractor.

1.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1.13 Subject to Paragraph .14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any

Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

(b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or

(ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (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 Personnel 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;

(e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

(f) 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:

(i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Supplier or Replacement Sub-contractor 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 Personnel List in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel 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 the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

1.14 The indemnities in Paragraph .13 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 Sub-contractor (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 Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS

For Top 10 delivery areas

REDACTED

ANNEX E2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: DHL Global Forwarding (UK) Ltd

Number of Employees in-scope to transfer:

Completion notes

1. If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.

1. This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.

1. If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.

EMPLOYEE DETAILS & KEY TERMS							
Details	**Job Title**	**Grade / band**	**Work Location**	**Age**	**Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?**	**Continuous service date (dd/mm/yy)**	**Date employment started with existing employer**
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	EMPLOYEE DETAILS & KEY TERMS						
Details	**Contract end date (if fixed term contract or temporary contract)**	**Contractual notice period**	**Contractual weekly hours**	**Regular overtime hours per week**	**Mobility or flexibility clause in contract?**	**Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector**	**Any collective agreements?**
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

	CONTRACTUAL PAY AND BENEFITS							
Details	**Any existing or future commitment to training that has a time-off or financial implication**	**Car allowance (£ per year)**	**Lease or company car details**	**Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)**	**Private medical insurance (please specify whether single or family cover)**	**Life assurance (xSalary)**	**Long Term Disability / PHI (% of Salary**	**Any other benefits in kind**
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

	CONTRACTUAL PAY AND BENEFITS					
Details	**Annual leave entitlement (excluding bank holidays)**	**Bank holiday entitlement**	**Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)**	**Maternity or paternity or shared parental leave entitlement and pay**	**Sick leave entitlement and pay**	**Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)**
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	PENSIONS					
Details	**Employee pension contribution rate**	**Employer pension contribution rate**	**Please provide the name of the pension scheme and a link to the pension scheme website**	**Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?**	**If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?**	**Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?**
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	PENSIONS					
Details	**If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering 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**
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9.2

KEY PERSONNEL

Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities /Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role	Email address	Telephone Number
Contract Manager	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
Contract Sponsor	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
IT Solutions	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
CFO	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**
CEO	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 10

GUARANTEE

name of the Guarantor: Deutsche Post DHL Beteiligungen GmbH

- and -

name of the Beneficiary: The Secretary of the Home Department

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the "**Deed**")

BETWEEN:

(1) **Deutsche Post DHL Beteiligungen GmbH** a company incorporated under the laws of Germany, registered in Charles-de-Gaulle-Str. 20, 53113 Bonn Germany with number Registry Court Bonn HRB 6792, Duns number: 342382733 , whose principal office is at [insert office details] (the "**Guarantor**"); and

(2) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**, acting on behalf of the Crown **of 2 Marsham Street, London, SW1P 4DF** (the "**Authority**").

together the "**Parties**" and each a "**Party**".

BACKGROUND:

(A) The Authority has awarded a contract dated 30/09/2022 to DHL Global Forwarding (UK) Ltd (the "**Supplier**") for the provision of International Secure Delivery services to be provided] (the "**Guaranteed Agreement**").

(B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.

(C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The **following** definitions apply in this Deed:

"Business Day"	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
"Control"	means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: (a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or (b) as a result of any powers conferred by the constitutional or corporate documents, or

any other document regulating that body or any other body corporate;

"Guaranteed Agreement"	has the meaning given to it in Recital (A);
"Guaranteed Obligations"	has the meaning given to it in Clause 2.1(a);
"Supplier"	has the meaning given to it in Recital (A);
"VAT"	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

(a) the "Guarantor", the "Authority", the “Supplier” or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;

(b) "assets" includes present and future properties, revenues and rights of every description;

(c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;

(d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(f) the words “including”, “includes”, “in particular”, “for example” or similar shall be construed as illustrative and without limitation to the generality of the related general words; and

(g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

(a) guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they

become due and performable in accordance with the terms of the Guaranteed Agreement (the "**Guaranteed Obligations**");

(b) shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and

(c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:

(a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or

(b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

(c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 AUTHORITY PROTECTIONS

Continuing Guarantee

3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:

(a) any arrangement made between the Supplier and the Authority;

(b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;

(c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;

(d) any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;

(e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;

(f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;

(g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

3.3 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:

(a) be subrogated to any right or security of the Authority;

(b) claim or prove in competition with the Authority against the Supplier or any other person;

(c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;

(d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or

(e) claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment of other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall

be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:

(a) without any set-off, condition or counterclaim whatsoever; and

(b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.

5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

(a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and

(b) the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.

5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.

5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:

(a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and

(b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

7.1 The Guarantor represents and warrants to the Authority that:

(a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;

(b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;

(c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;

(d) it has been duly authorised to enter into this Deed;

(e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;

(f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

(g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;

(h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and

(i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.

8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.

9 VARIATION

9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

10 DEMANDS AND NOTICES

10.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:

(a) For the Attention of: Head of Corporate Finance

(b) Deutsche Post AG, Headquarters, 53250 Bonn, Germany Fax: +49 228 182 64399

10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.

10.3 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:

(a) if delivered by hand, at the time of delivery; or

(b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

10.5 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

11 ENTIRE AGREEMENT

11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation,

warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

12.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

13.1 If any provision or part-provision of this Deed 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 this Deed.

14 THIRD PARTY RIGHTS

14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

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

15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.

15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

15.5 [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.]

Executed as a deed by (1) Deutsche Post DHL Beteiligungen GmbH acting by [insert name of Director] a director, in the presence of a witness:

…….	…….
[Signature of Witness]	[Signature of Director]
	Name of Director:
	……
Name of Witness:	……
Address of Witness:	…….
	…….
Occupation of Witness:	…….

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

1.2 The contact details of the Authority's Data Protection Officer are: **dpo@homeoffice.gov.uk**

1.3 The contact details of the Supplier's Data Protection Officer are: **[Insert** Contact details]

1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.5 Any such further instructions shall be incorporated into this Schedule.

Description	**Details**
Identity of Controller for each Category of Personal Data	**The Parties are Independent Controllers of Personal Data** *The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:* *Business contact details of Supplier Personnel,* *Business contact details of any directors, officers, employees, agents, consultants, and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under this Agreement).* The supplier will deliver our products including but not limited to British passports, supporting documentation, priority certificates and emergency travel documents to customers outside the UK for the Secretary of State for the Home Department . Data will be provided to DHL from HMPO for the purpose of delivering our products effectively and securely.
Duration of the processing	The duration of the processing will be in accordance with the Terms of the Agreement which may/will vary from time to time
Nature and purposes of the processing	

	The supplier will collect, record, organise, store and ultimately securely dispose of data passed to them for the purposes of securely delivering our products.
Type of Personal Data	Names and addresses of passport applicants or where children are the passport holder, a named person with parental responsibility. Email addresses and or phone numbers may also be passed to the supplier.
Categories of Data Subject	For the purposes of delivery, customer and some staff details who are involved in the delivery process within the Home Office will be passed to the supplier. No special category data is expected to be shared with the supplier.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data passed to the supplier should not be kept longer than is necessary. Once delivery is completed data will be kept by the supplier for a period of time typically for Customer Service or security investigations. Suppliers will be responsible for ensuring secure destruction/deletion of data once no longer required which would not be expected to be beyond 9 months.

ANNEX 1: JOINT CONTROLLER AGREEMENT

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this 0 (*Joint Controller Agreement*) in replacement of Clause 24.2-24.15 (*Where one Party is Controller and the other Party is Processor*) and 24.17-24.27 (*Independent Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Authority]:

(a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;

(b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

(c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;

(d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

(e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of paragraph .2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Authority each undertake that they shall:

(a) report to the other Party every month

(i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

(ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

(iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;

(iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

(v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Agreement during that period;

(b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs ..1(a)(i) to (v); and

(c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs ..1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.

(d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.

(e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.

(f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data

(g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

(i) are aware of and comply with their duties under this 0 (*Joint Controller Agreement*) and those in respect of Confidential Information

(ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

(iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

(h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures.

(i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

(j) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3. Data Protection Breach

3.1 Without prejudice to Paragraph .2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

(a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

(b) all reasonable assistance, including:

(i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

(ii) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;

(iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

(iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph .2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

(a) the nature of the Personal Data Breach;

(b) the nature of Personal Data affected;

(c) the categories and number of Data Subjects concerned;

(d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;

(e) measures taken or proposed to be taken to address the Personal Data Breach; and

(f) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

(a) the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this 0 and the Data Protection Legislation.

(b) the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph .1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

5.1 **The Parties** shall:

(a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);

(b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Agreement, in accordance with the terms of Article 30 GDPR.

6. ICO Guidance

6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

[Guidance: This paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

(a) If in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be

responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;

(b) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident.

(c) If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*).

7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):

(a) if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;

(b) if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and

(c) if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in Paragraphs .2-.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

8. Termination

8.1 If the Supplier is in material Default under any of its obligations under this 0 (*Joint Control Agreement*), the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 33 (*Termination Rights*).

9. Sub-Processing

9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

(a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and

(b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

ANNEX 2: CONTROLLER TO CONTROLLER STANDARD CONTRACTUAL CLAUSES –

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers) Data transfer agreement between

_____

(name)

_____

(address and country of establishment)

hereinafter “data exporter”)

and

_____

(name)

_____

(address and country of establishment

hereinafter “data importer”

each a “party”; together “the parties”.

Definitions

For the purposes of the clauses:

a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);

b) “the data exporter” shall mean the controller who transfers the personal data;

c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;

d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.

c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.

d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.

e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be

obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.

c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.

d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.

e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).

f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).

g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.

h) It will process the personal data, at its option, in accordance with:

   (i) the data protection laws of the country in which the data exporter is established, or

(ii) the relevant provisions[1] of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data[2], or

(iii) the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: _____

Initials of data importer: _____;

i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and

(i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or

(ii) the third-party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or

(iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or

(iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable

[1] "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).
[2] However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected

to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.

b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

VI. Termination

a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.

b) In the event that:

(i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);

(ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

(iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;

(iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or

(v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.

d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated: _____

_____	_____
FOR DATA IMPORTER	FOR DATA EXPORTER
.....	……
.....	……
.....	……

ANNEX A

DATA PROCESSING PRINCIPLES

1) Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.

2) Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.

3) Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.

4) Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.

5) Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject

must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.

6) Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.

7) Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.

8) Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:

   a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and

      (ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

      Or

   b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

(To be completed by the parties)

Data Subjects

The personal data transferred concern the following categories of data subjects:

……
……
……
……

Purposes of the transfer(s)

The transfer is made for the following purposes:

……
……
……
……

Categories of data

The personal data transferred concern the following categories of data:

……
……
……
……

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

……
……
……
……

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

……
……

……
……

Data protection registration information of data exporter (where applicable)

……
……

Additional useful information (storage limits and other relevant information)

……
……

Contact points for data protection enquiries

Data importer	**Data exporter**
.....	…….
.....	…….
.....	…….

ANNEX 3: CONTROLLER TO PROCESSOR STANDARD CONTRACTUAL CLAUSES – NOT APPLICABLE

STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: .....
Address: ....
Tel. .....; fax .....; e-mail: .....
Other information needed to identify the organisation
.....

(the data **exporter**)

And

Name of the data importing organisation: .....
Address: ....
Tel. .....; fax .....; e-mail: .....
Other information needed to identify the organisation
.....

(the data **importer**)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1
Definitions

For the purposes of the Clauses:

a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[3];

b) 'the data exporter' means the controller who transfers the personal data;

c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer

[3] Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any

successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4
Obligations of the data exporter

The data exporter agrees and warrants:

a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

e) that it will ensure compliance with the security measures;

f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5
Obligations of the data importer[4]

The data importer agrees and warrants:

a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

[4] Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;

(ii) any accidental or unauthorised access; and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

   The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7
Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

   a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

   b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8
Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9
Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely ….....

Clause 10
Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11
Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses[5]. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall

[5] This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely .....

4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): ….....
Position:.....
Address: ....
Other information necessary in order for the contract to be binding (if any):

Signature ……

(stamp of organisation)

On behalf of the data importer:

Name (written out in full): ….....
Position:.....
Address: ....
Other information necessary in order for the contract to be binding (if any):

Signature ……

(stamp of organisation)

Appendix 1
to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter
The data exporter is (please specify briefly your activities relevant to the transfer):
.....
.....
.....

Data importer
The data importer is (please specify briefly activities relevant to the transfer):
.....
.....
.....

Data subjects
The personal data transferred concern the following categories of data subjects (please specify):
.....
.....
.....

Categories of data
The personal data transferred concern the following categories of data (please specify):
.....
.....
.....

Special categories of data (if appropriate)
The personal data transferred concern the following special categories of data (please specify):
.....
.....
.....

Processing operations
The personal data transferred will be subject to the following basic processing activities (please specify):
.....

.....
.....

DATA EXPORTER
Name: .....
Authorised Signature .....

DATA IMPORTER
Name: .....
Authorised Signature .....

Appendix 2
to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

.....
.....
.....
.....