

Concession Agreement
TERMS AND CONDITIONS

DATED

29/10/2021

(1) *THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS*

and

(2) *DENTSU INTERNATIONAL SWITZERLAND AG*

CONCESSION AGREEMENT
relating to

The Authority's Tobacco Track and
Trace System

HMRC Concession Agreement

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THIS AGREEMENT is made on

29/10/2021

BETWEEN:

- (1) **THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the "**Authority**"); and
- (2) **DENTSU INTERNATIONAL SWITZERLAND AG** a company registered in Switzerland under company number 211607825 whose registered office is at Kanzleistrasse 57, 8004 Zurich, Switzerland (the "**Supplier**"),

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

INTRODUCTION

- (A) The Authority is responsible for the UK's tax administration and ensures that tax revenue is available to fund the UK's public services.
- (B) The Authority wishes to appoint a supplier in accordance with the Concession Contracts Regulations 2016 to operate the concession for the Tobacco Track & Trace System.
- (C) The Supplier is a leading provider of traceability systems and has experience in tracking and tracing tobacco products.
- (D) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (E) The Parties acknowledge that the concession (comprising the right to supply the Services and seek to obtain revenues from them) granted to the Supplier to supply the Services to End-Customers is granted on the basis that the Supplier takes the risk and the cost in the supply of the Services.

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;

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- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation;
 - (e) 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”;
 - (f) 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;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided and save for references in Schedule 10 (*Guarantee*):
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) 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
 - (i) 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 or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, 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) Schedule 2.8 (*Data Protection*), if such Schedule is used;
 - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
 - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
 - (f) any other document referred to in this Agreement or any other document attached to this Agreement.

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- 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:
- (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 the processes and requirements of the Authority;
 - (d) it has entered into this Agreement in reliance on its own due diligence and acknowledges that, notwithstanding anything else in this Agreement, the Authority makes no representations as to the volume of business that may be achieved in respect of the provision by the Supplier of the Services.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- (a) any reduction in demand from End-Customers in respect of the Services;
 - (b) any unsuitable aspects of the Authority System;
 - (c) any misinterpretation of the Authority Requirements; and/or
 - (d) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

- 3.1 The Supplier represents and warrants that:
- (a) 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;
 - (b) this Agreement is executed by its duly authorised representative;
 - (c) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this agreement;
 - (d) 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 or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

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- (e) 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 SQ 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;
- (f) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
- (g) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Subcontractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
- (h) it has all necessary rights in and to the 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;
- (i) any Cost, Supplier Profit or Supplier Profit Margin in the Cost Model is a true and accurate reflection of such Cost, Supplier Profit or 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 Models;
- (j) 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;
- (k) no profit warnings, 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
- (l) that neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

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SECTION B - THE SERVICES

4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (Termination Rights), terminate at the end of the Term.

5 SERVICES

Standard of Services

5.1 The Supplier shall provide:

- (a) any Mobilisation from (and including) the Mobilisation 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, without prejudice to Clause 1.4 (*order of precedence*), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description.

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 Quality Standards;
 - (iv) the Baseline Security Requirements;
 - (v) 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)(iv);
- (b) where applicable, maintain accreditation with the relevant Quality Standards

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authorisation body; and

- (c) 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)(iv), 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) ensure that the charges that it makes to the End-Customers shall not be increased save as set out in Schedule 7.1 (*End-Customer Fees*);
- (b) 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;
- (c) save to the extent that the Authority is expressly required to obtain and maintain the same under this Agreement 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;
- (d) ensure that:
 - (i) it shall continue to have all necessary rights in and to the 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; and
 - (ii) 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;
- (e) minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;
- (f) ensure that any Documentation and training provided by the Supplier to the Authority, end-user and other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (g) co-operate with any 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 provide services to the Authority 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

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Authority and/or to any Replacement Supplier;

- (h) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (i) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (j) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (k) notify the Authority in writing within ten (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; and
- (l) 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 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 Supplier's obligations under this Agreement.

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(c) and Clause 5.5(e) inclusive within three (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(f) to 5.5(g) inclusive within twenty (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.

Software

- 5.8 The Supplier shall ensure that the Software (if any) complies with Good Industry Practice in all respects including in respect of availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio

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management.

- 5.9 The Supplier shall comply with and feed into the Authority's incident and problem management processes and procedures in respect of any Software.

Continuing obligation to provide the Services

- 5.10 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 failure by the Authority comply with its obligations under the Agreement; and/or
 - (b) the existence of an unresolved Dispute.

Optional Services

- 5.11 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.
- 5.12 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 Contract Change will have on the relevant Optional Services.
- 5.13 Following receipt of the Authority's notice pursuant to Clause 5.11:
- (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 mobilise and, if applicable, test the relevant Optional Services in accordance with a mobilisation plan which the Parties shall agree in respect of such Optional Services ("**Optional Services Mobilisation Plan**");
 - (c) any additional End-Customer Fees chargeable to End-Customers for the Optional Services shall be incorporated in the Fees as specified in Schedule 7.1 (*Fees*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Mobilisation Plan for the Optional Services (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 KPIs applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Scope

- 5.14 The Supplier acknowledges and agrees that:
- (a) its relationship with the Authority is not exclusive; and

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- (b) the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

Conflicts of Interest

- 5.15 The Supplier shall take appropriate steps to ensure that, to the best of its knowledge, neither the Supplier nor any Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any member of the Supplier Personnel and the duties owed to the Authority under the provisions of the Contract. The Supplier shall disclose to the Authority full particulars of any such conflict of interest which may arise.
- 5.16 For the purposes of clauses 5.15 and 5.17, any potential or actual conflict regarding the Supplier's independence from the tobacco industry as defined by article 15 of CIR 2018/574 and regulation 16 of The Tobacco Products (Traceability and Security Features) Regulations 2019, will be deemed a conflict of interest.
- 5.17 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a material breach of this Agreement and, accordingly, a Supplier Termination Event.

6 MOBILISATION AND PROJECTS

Mobilisation Plan and Delays

- 6.1 The Parties shall comply with the Mobilisation Plan and provisions of Schedule 6.1 (*Mobilisation*) in relation to the agreement and maintenance of the Mobilisation Plan.
- 6.2 The Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall apply in respect of the steps to be taken by the Parties.

Testing and Achievement of Milestones

- 6.4 In respect of any Milestone the Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone has been Achieved.

Quality Plans

- 6.5 The Supplier shall provide Quality Plans in accordance with Schedule 2.3 (*Standards*), if such Schedule is used.

7 PERFORMANCE INDICATORS

- 7.1 The Supplier shall:

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- (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 ATP 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 KPIs.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to improving the quality and efficiency of the Services. The Parties shall provide each other with any information reasonably required to meet this objective.
- 8.2 The Parties shall comply with the provisions of Part A of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to the Supplier's ongoing obligation of continuous improvement.

9 NOT USED.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

End-Customer Fees

- 10.1 In consideration of the Supplier carrying out its obligations under the Agreement, including the provision of the Services, the Supplier shall be entitled to charge End-Customers the End-Customer Fees in respect of its provision of the Services.
 - (a) The Supplier shall procure that Dentsu London Limited (company number 01939690 of 10 Triton Street, Regents Palace, London, NW1 3BF), the Supplier's UK-based entity, will issue the invoices for all payments made to the Supplier under or in connection with this Agreement. Furthermore, the Supplier shall ensure that all payments that it receives as a result of the Services are received into a UK bank account or accounts. The details of how this will be implemented will be agreed by the Parties during the Mobilisation period.
- 10.2 The Supplier acknowledges that all costs incurred by it in respect of the commencement of, Mobilisation of and supply of the Services shall be borne by the Supplier and the Authority shall have no liability in respect of the same.
- 10.3 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's supply of the Services. Any amounts due under this clause 10.3 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which cost is incurred and/or the liability is payable by the Authority.

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Value For Money

- 10.4 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to savings initiatives in relation to the provision of the Services.

Financial Distress

- 10.5 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 the consequences of a change to that financial standing.

Promoting Tax Compliance

- 10.6 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.
- 10.7 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor or Sub-contractor.
- 10.8 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (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.
- 10.9 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 Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.9 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 10.10 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

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- 10.11 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.6 to 10.10 (inclusive) then this shall constitute a Supplier Termination Event.
- 10.12 The Authority may internally share any information which it receives under Clauses 10.7 to 10.8 (inclusive) and 10.10.

Use of Off-shore Tax Structures

- 10.13 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority or any End-Customer under, or pursuant to or in connection with this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract ("Prohibited Transactions"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 10.14 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 10.15 In the event of a Prohibited Transaction being entered into in breach of Clause **Error! Reference source not found.** above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.6 and 10.13, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.
- 10.16 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.13 and 10.15 shall constitute a Supplier Termination Event.

Payment of Sub-contractors

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

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- 10.18 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 10.19 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.13 and 10.15 shall constitute a Supplier Termination Event.

The Models

- 10.20 The Supplier shall:
- (a) complete each iteration of the Models using reasonable skill and care;
 - (b) prepare each iteration of the Models using the same methodology, software package, layout and format as that used for the initial iteration of the Models and ensure it does not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;
 - (c) ensure that each iteration of the Models a true and fair reflection of the contents therein, is accurate and not misleading; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Models.
- 10.21 All changes to the Models shall be auditable and implemented and documented under formal version control in accordance with the Change Control Procedure.

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.
- 11.2 Each Party shall appoint a representative in accordance with this Clause 11 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 and the management of the Services.
- 11.3 The initial Supplier Representative shall be the person named as contract manager for the Supplier in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used, or Schedule 8.1 (*Governance*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (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.

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12 RECORDS, REPORTS AND AUDITS

- 12.1 The Supplier shall, during the Term and for a period of at least seven (7) years following the expiry or termination of the Agreement, maintain or cause to be maintained, in accordance with Good Industry Practice, timely, complete, accurate and comprehensive documents, information and records in relation to the provision of the Services. Without prejudice to the generality of this obligation, such reports shall include any information that may reasonably be stipulated by the Authority from time to time.
- 12.2 The Authority may, either itself or through an appointed auditor, at any time conduct a audit to verify compliance by the Supplier with its obligations under the Agreement and/or to review any relevant books of account kept by the Supplier in connection with the provision of the Services and/or in order to comply with a requirement of a regulatory body.
- 12.3 The Supplier shall (and shall ensure that its Sub-contractors shall) on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance 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 controlled by the Supplier (and any Sub-contractor) and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to Supplier Personnel.
- 12.4 In addition and without prejudice to the generality of the foregoing, the Authority shall have the right to access and review from time to time any technical records and documents relating to the Services held by the Supplier and the Supplier shall cooperate fully with the Authority to facilitate the same whenever requested to do so.
- 12.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 12.

Reports and Records

- 12.6 The Supplier shall comply with the provisions of:
- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
 - (b) Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used, in relation to open book accounting and the provision of financial information and reports.

13 CHANGE

Change Control Procedure

- 13.1 Any requirement for a Contract Change shall be subject to the Change Control Procedure as set out in Schedule 8.3 (*Change Control Procedure*).

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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 End-Customer Fees as the result of a Change in Law.
- 13.3 Without prejudice to Clause 13.2, each Party shall monitor and shall keep the other Party informed in writing of any change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

- 14.1 The Supplier shall:
- (a) 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, BPSS and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
 - (iii) meet the training and awareness requirements set out in Schedule 2.8 (*Data Protection*);
 - (b) 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;
 - (c) 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;
 - (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (e) 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;
 - (f) bear the familiarisation and other costs associated with any replacement of any Supplier Personnel;
 - (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement; and
 - (h) pay the Supplier Personnel the Mandatory Wage as required by Law.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable

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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 terms of Schedule 9.2 (*Key Personnel*) shall apply, if such Schedule is used.

Employment Indemnity

14.4 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

14.5 Where the Supplier or any Supplier Personnel are liable to Tax 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 Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (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 for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.5(a) or why Clause 14.5(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.5 then this shall constitute a Supplier Termination Event.

14.6 The Authority may internally share any information which it receives under Clause 14.5(c).

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Staff Transfer

14.7 The Parties agree that:

- (d) 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 of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B 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 and B of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (e) 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 and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- (f) Part D 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

15.1 The Parties shall comply with the provisions of Schedule 4.3 (*Notified and Key Sub-contractors*) in relation to the appointment of Sub-contractors and the terms of Sub-contracts. The Supplier shall ensure that it and all of its Sub-contractors are independent of any and all End-Customers of the Services.

Exclusion of Sub-contractors

15.2 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 38 of the Concession Contracts Regulations 2016, 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.

Exclusion of Key Sub-contractors

15.3 The Authority, at its sole discretion, may require the Supplier to terminate a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to

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Clause 33.1(b) (*Termination by the Authority*);

- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass 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;
- (c) 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;
- (d) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.6 to 10.8 (inclusive) (*Promoting Tax Compliance*); and/or
- (e) the relevant Sub-Contractor has failed to comply with the terms of its Sub-Contract equivalent to those set out at Clauses **Error! Reference source not found.** to 10.16 (inclusive) (*Use of Off-shore Tax Structures*);
- (f) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.2 (*Exclusion of Sub-contractors*); and or
- (g) there is a change of Control of the relevant 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 six (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.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

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

Project Specific IPR

16.2 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs.

16.3 The assignment under Clause 16.2 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.

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- 16.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.
- 16.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to effect the assignment under Clause 16.2.
- 16.6 The Authority shall grant to the Supplier a non-exclusive royalty-free licence of the Project Specific IPRs to enable the Supplier to provide the Services during the Term.
- 16.7 The Supplier shall not be entitled to use the Project Specific IPR (including, without limitation, the End-Customer Data) in any other way and/or for any other purpose than is set out in Clause 16.6.
- 16.8 The Supplier shall, on request and at no cost to the Authority, supply the Authority with copies of the End-Customer Data (including any sub-sets or species of End-Customer Data) in a format reasonably required by the Authority.

17 LICENCES GRANTED BY THE SUPPLIER

- 17.1 The Supplier hereby grants to the Authority and the Government Controlled Company a royalty free and non-exclusive licence for the Term and any Termination Assistance Period allowing them to access and use, load, execute, store, transmit, display and copy:
 - (a) The System IPRs;
 - (b) the Supplier Background IPRs; and
 - (c) the Third Party IPRs.
- 17.2 The Supplier shall extend the rights granted to the Authority and the Government Controlled Company under Clause 17.1 (including as to indemnification against IPRs Claims) to their respective contractors and sub-contractors for the duration of the Term solely for the purpose of providing services to the Authority or the Government Controlled Company.
- 17.3 The licences in Clause 17.1:
 - (a) are granted for any purpose relating to the Services (or substantially equivalent services); or
 - (b) are granted for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
 - (c) includes the right to create an archival copy and a back-up copy;
 - (d) includes the right to sub-license the rights granted to it to a third party (including for the avoidance of doubt any Replacement Supplier) on no less favourable terms than granted to the Authority and the Government Controlled Company (including as to indemnification against IPRs Claims) for the benefit of the Authority and or the Government Controlled Company provided such third party is under a contractual obligation to the Authority to comply with

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confidentiality obligations that are broadly equivalent to those of the Authority pursuant to Clause 21 (Confidentiality);

- (e) includes the right for the Authority to:
 - (i) assign, novate or otherwise dispose of its rights and obligations to any other body (including any other Central Government Body and or any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
 - (ii) transfer the licences to other machines or users within the Authority.

17.5 For the avoidance of doubt 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 17.1 and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).

17.6 The Supplier hereby grants to the Authority a non-exclusive perpetual licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.

17.13 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.

17.14 The Supplier shall retain the Intellectual Property Rights in the System IPRs.

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:

- (a) the Authority Background IPR;
- (b) the Authority's documentation, processes and procedures;
- (c) the Authority's Know-How; and
- (d) the Authority Data.

18.2 The licence granted in Clause 18.1:

- (a) includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
- (b) is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

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- 18.3 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 18.1 and any sub-licence granted in accordance with Clause 18.2(a) shall terminate automatically and the Supplier and all Sub-contractors shall deliver to the Authority all material licensed to the Supplier pursuant to Clause 18.1 or Clause 18.2(a) in the Supplier's possession or control.

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 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

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- 20.2 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.
- 20.3 To the extent that Authority Data and/or End-Customer Data are held and/or processed by the Supplier, the Supplier shall supply that Authority Data and/or End-Customer Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and End-Customer Data and prevent the unauthorised access, interception, corruption or loss of Authority Data and End-Customer Data at all times that the relevant Authority Data and/or End-Customer Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform and maintain secure back-ups of all Authority Data and End-Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with any BCDC 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 no additional cost to the Authority, and that the data contained in the back-ups are available at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data and End-Customer Data, including back-up data, is a secure system that complies with the security requirements in this Agreement.
- 20.7 If the Authority Data and/or End-Customer 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 and/or End-Customer Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Capability*) and the Supplier shall do so as soon as practicable but not later than five (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/or End-Customer 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 (*Business Continuity and Disaster Capability*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data and/or End-Customer 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.
- 20.9 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

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Obligations under the Finance Act 1989, the Commissioners for Revenue and Customs Act 2005 and the Social Security Administration Act 1992

- 20.10 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:
- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
 - (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 20.11 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.10 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 20.12 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21, 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.
- 21.2 Except to the extent set out in this Clause 21 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

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- (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.
- 21.3 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 22 (*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.
- 21.4 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.
- 21.5 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 21.5, 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.

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21.6 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 21.6(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 30 (*Step-In Rights*) 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 21.

21.7 Nothing in this Clause 21 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.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any Contract Changes or Operational Changes 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;

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

22.2 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

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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.

- 22.3 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 Schedule 8.2 (*Reports and Records*).
- 22.4 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.
- 22.5 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.
- 22.6 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 21.6(c)) and, if required to be provided under Schedule 7.5 (*Financial Reports and Audit Rights*, any Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 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 two (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 five (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.

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- 22.8 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.

23 PROTECTION OF PERSONAL DATA

- 23.1 In accordance with and subject to the provisions of this clause 23, the Parties shall comply with Schedule 2.8 (*Data Protection*) in relation to the Processing of Personal Data.

Status of Controller

- 23.2 The Parties acknowledge that for the purposes of the Relevant Data Protection Laws, 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 Relevant Data Protection Laws. 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 2.8 (*Data Protection*) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 23.3 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 2.8 (*Data Protection*) by the Controller.
- 23.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Relevant Data Protection Laws.
- 23.5 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;

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- (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.
- 23.6 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 2.8 (*Data Protection*), 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 the measures set out in clause 20 (*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 2.8 (*Data Protection*));
 - (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 21 (*Confidentiality*) and 20 (*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;
 - (iii) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

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- (A) 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;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the Processor complies with its obligations under the Relevant Data Protection Laws 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
 - (D) 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
 - (iv) 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.
- 23.7 Subject to clause 23.8, 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 Relevant Data Protection Laws;
 - (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.
- 23.8 The Processor's obligation to notify under clause 23.7 shall include the provision of further information to the Controller in phases, as details become available.
- 23.9 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 Relevant Data Protection Laws and any complaint, communication or request made under clause 23.7 (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

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comply with a Data Subject Request within the relevant timescales set out in the Relevant Data Protection Laws;

- (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.
- 23.10 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.
- 23.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 23.12 The Parties shall designate a Data Protection Officer if required by the Relevant Data Protection Laws.
- 23.13 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 23 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.
- 23.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 23.15 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).
- 23.16 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

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issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 23.17 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 2.8 (*Data Protection*).

Where the Parties are Independent Controllers of Personal Data

- 23.18 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 Relevant Data Protection Laws in respect of their processing of such Personal Data as Controller.
- 23.19 Each Party shall process the Personal Data in compliance with its obligations under the Relevant Data Protection Laws and not do anything to cause the other Party to be in breach of it.
- 23.20 Where a Party has provided Personal Data to the other Party in accordance with clause 23.18, 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.
- 23.21 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.
- 23.22 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 Relevant Data Protection Laws (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 2.8 (*Data Protection*).
- 23.23 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 Relevant Data Protection Laws, including Article 32 of the GDPR.
- 23.24 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.
- 23.25 Where a Party receives a request by any Data Subject to exercise any of their rights

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under the Relevant Data Protection Laws in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (“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:
- (c) 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
- (d) 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 Relevant Data Protection Laws.
- (e) 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:
- (f) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- (g) implement any measures necessary to restore the security of any compromised Personal Data;
- (h) work with the other Party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Relevant Data Protection Laws (including the timeframes set out therein); and
- (i) 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.

23.26 Personal Data provided by one Party to the other Party shall be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 2.8 (*Data Protection*).

23.27 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 2.8 (*Data Protection*).

24 **PUBLICITY AND BRANDING**

24.1 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.

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- 24.2 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

25 LIMITATIONS ON LIABILITY

Unlimited liability

- 25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation by it or its employees;
 - (iii) 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
 - (iv) any liability to the extent it cannot be limited or excluded by Law;
- (b) the Supplier's liability in respect of the indemnities in Clause 10.9(VAT), Clause 14.4 (*Employment Indemnity*), Clause 14.5 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); or
- (c) the Authority's liability in respect of the indemnities in Clause 14.4 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

Financial and other limits

- 25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.4 and 25.5 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of all losses, fines and/or expenses incurred by the Authority, including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach, arising out of or in connection with loss of or damage to Authority Data or breach of any of its obligations under Clause 20 or 23 of this Agreement or of the Relevant Data Protection Laws that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the greater of £20 million and one hundred and fifty per cent (150%) of the Estimated Year 1 End-Customer Fees paid by End-Customers

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of the Services to the Supplier;

- (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the greater of £20 million and one hundred and fifty per cent (150%) of the End-Customer Fees paid by End-Customers of the Services to the Supplier 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 the greater of £20 million and one hundred and fifty per cent (150%) of the End-Customer Fees paid by End-Customers of the Services to the Supplier in the 12 month period immediately prior to the last day of the Term.
 - (b) 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 an amount equal to one hundred and fifty per cent (150%) of the End-customer Fees paid by End-Customers of the Services to the Supplier or due to be paid or payable during the Contract Year in which the Default occurred,
 - (c) provided that where any Losses referred to in this Clause have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), 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 one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).
- 25.3 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.4 (*Consequential Losses*), 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 one hundred thousand pounds (£100,000).

Consequential Losses

- 25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5, 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).
- 25.5 Notwithstanding Clause 25.4 but subject to Clause 25.2, 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 which are deemed to be a non-exhaustive list of direct and recoverable Losses:
- (a) the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
 - (b) notwithstanding clauses 25.5(c) and 25.5(h), any operational and/or

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administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;

- (c) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (d) any wasted expenditure or charges;
- (e) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (f) any compensation or interest paid to a third party by the Authority;
- (g) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;
- (h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data; and
- (i) any anticipated savings identified in Schedule 7.6 (*Anticipated Savings*), if that Schedule is used.

Conduct of indemnity claims

- 25.6 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

- 25.7 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.

26 INSURANCE

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

27 RECTIFICATION PLAN PROCESS

27.1 Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if there is a KPI Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;
- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the KPIs as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been a KPI Failure;
- (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); and/or
- (d) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a 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. Any notice provided pursuant to this Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

Notification

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or

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- (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),
- (c) then unless the Notifiable Default also constitutes :
 - (i) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
 - (ii) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
 - (iii) a Step-In Trigger Event and the Authority serves a Step-In Notice,the Supplier shall comply with the Rectification Plan Process. If the Notifiable Default is a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall also apply and if the Notifiable Delay is a KPI Failure, Paragraph 3 (*KPI Failure*) of Part A of Schedule 2.2 (*Performance Levels*) shall also apply.

27.4 The “**Rectification Plan Process**” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

27.5 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 27.3(*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.6 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).

27.7 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 5 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

27.8 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

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within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

- 27.9 If the Authority consents to the Rectification Plan the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28 NOT USED

29 ESCALATION PROCESS

- 29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice ("**Escalation Notice**") to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority ("**Escalation Meeting(s)**").
- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).
- 29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.
- 29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.
- 29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 29.6 If the Supplier is in Default of any of its obligations under Clause 29 (Escalation Process), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b) (Termination by the Authority).

30 STEP-IN RIGHTS

- 30.1 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 30 (*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 21 (*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

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- (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.

30.2 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 30.

30.3 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)
- (c) the Supplier shall, on demand, pay to the Authority the sums incurred by the Authority in respect of the Authority's costs of taking the Required Action.

30.4 Before ceasing to exercise its step-in rights under this Clause 30 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 30.5.

30.5 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (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.

30.6 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 within five (5) Working Days 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.

30.7 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier's

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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), (f) and (g) 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).

31 AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Agreement, if the Supplier

- (a) has failed to:
 - (i) Achieve a Milestone by its Milestone Date;
 - (ii) provide the Operational Services in accordance with the Target Performance Levels; and/or
 - (iii) 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 Clauses 31.2 and 31.4 the Supplier shall not be treated as being in breach of this Agreement, but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

31.2 In order to claim the relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (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.

31.3 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.

31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the

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Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

31.5 Without prejudice to Clause 5.10 (*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 FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Capability*)), a Party may claim relief under this Clause 32 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.

32.2 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.

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services including any BCDC Services, but the Supplier has failed to do so; and/or
- (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.

32.4 Subject to Clause 32.5, 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.

32.5 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

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Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

32.6 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 33.1(c) (*Termination by the Authority*) or Clause 33.6 (*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 during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (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.

32.7 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.

32.8 Relief from liability for the Affected Party under this Clause 32 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 32.7.

SECTION I - TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Authority

- 33.1 The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:
- (a) not used;
 - (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

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- (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.

33.2 Where the Authority:

- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (c) and/or (j) 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 33.1(b) or Clause 33.1(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 for Persistent Breach

33.3 If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice ("**Termination Warning Notice**") on the Supplier:

- (a) specifying that it is a formal Termination Warning Notice;
- (b) giving reasonable details of the Default; and
- (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.

33.4 If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier ("**Final Termination Warning Notice**"):

- (a) specifying that it is a Final Termination Warning Notice;
- (b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and
- (c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).

33.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

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Termination by the Supplier

- 33.6 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement if any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days. 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 twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of this clause 33.6 would result in a Partial Termination, the provisions of Clause 33.7 (*Partial Termination*) shall apply.

Partial Termination

- 33.7 If the Supplier notifies the Authority pursuant to Clause 33.6 (*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 one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.7, 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.
- 33.8 The Parties shall agree the effect of any Contract 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 Models and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 10.6 (*Promoting Tax Compliance*) and 10.13 (*Use of Off-shore Tax Structures*), 12 (*Records, Reports, Audits and Open Book Data*), 14.4 (*Employment Indemnity*), 14.5 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 16.8 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*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*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*),

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8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

- 34.2 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.
- 34.3 Not used.
- 34.4 Not used.
- 34.5 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 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.6 (*Termination by the Supplier*); or
 - (b) the Authority terminates this Agreement under Clause 33.1(d).

SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

- 35.1 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.
- 35.2 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

- 35.3 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

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- (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

35.4 The Supplier shall comply with the provisions of the Official Secrets Acts 1911 to 1989.

Modern Slavery Act

35.5 In performing its obligations under the Agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and
- (c) notify the Authority as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 35.5(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:
 - (i) remedy the breach; and
 - (ii) ensure future compliance with Clause 35.5(a) and (b).

35.6 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 35.5 then this shall constitute a Supplier Termination Event.

36 ASSIGNMENT AND NOVATION

36.1 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.

36.2 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 36.2.

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- 36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 36.4 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 (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 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.
- 37.2 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.

38 RELATIONSHIP OF THE PARTIES

- 38.1 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.
- 38.2 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Supplier.

39 PREVENTION OF FRAUD AND BRIBERY

- 39.1 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

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participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

39.2 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.

39.3 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; and
- (b) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request.

39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, 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.

39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, 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*).

39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, 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.

39.7 Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed

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the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

40 SEVERANCE

- 40.1 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.
- 40.2 In the event that any deemed deletion under Clause 40.1 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.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (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 40.3.

41 FURTHER ASSURANCES

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.

42 ENTIRE AGREEMENT

- 42.1 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.
- 42.2 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.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

- 43.1 The provisions of Clause 19 (*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 and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the

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provisions of Paragraph 8.11 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named 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.

- 43.2 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.
- 43.3 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
- 43.4 Subject to Clause 43.1 and, if such Schedule is used, Schedule 2.7 (*Service Recipients*) 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 **NOTICES**

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to Clause 44.4, 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™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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	the next Working Day (if after 5.00pm).	
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- 44.3 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	Personal information redacted.	Personal information redacted.
Address	Personal information redacted.	Personal information redacted.
Email	Personal information redacted.	Personal information redacted.

- 44.4 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 44.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.6 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 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 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 44.6 This Clause 44 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 8.4 (*Dispute Resolution Procedure*)).

45 NON-SOLICITATION

- 45.1 Except in respect of implementing any Relevant Transfer, the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the Authority any person employed by the Authority in the receipt and/or administration of the Services.

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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 Each Party irrevocably agree that 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 exclusively governed by and construed in accordance with the laws of England and Wales.
- 47.2 Subject to Clause 45 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties irrevocably 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.

IN WITNESS of which 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 ***Dentsu International Switzerland AG***

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of ***The Commissioners for Her Majesty's Revenue and Customs***

Signature:

Name (block capitals):

Position:

Date:

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SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

“Achieve”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“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;
“Agreement”	the clauses of this agreement together with the Schedules and annexes to it;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets (if any);
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Mobilisation Plan or a Project Plan;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports and Audit</i>) and/or Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none">(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;

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	<ul style="list-style-type: none">(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 Clause 12 (<i>Records, Reports, Audits & Open Book Data</i>);
“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”	<ul style="list-style-type: none">(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;
“Authority Cause”	any material Default by the Authority except to the extent that such Default is: <ul style="list-style-type: none">(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”	<ul style="list-style-type: none">(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:<ul style="list-style-type: none">(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;(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified, and

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	(c) the End-Customer Data.
“Authority Materials”	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none">(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, <p>but excluding any Project Specific IPRs;</p>
“Authority Representative”	<p>the representative appointed by the Authority pursuant to Clause 11.4;</p>
“Authority Requirements”	<p>the requirements of the Authority set out in Schedules 2.1 (<i>Services Description</i>), 2.2 (<i>Performance Indicators</i>), 2.4 (<i>Security Management</i>), 2.5 (<i>Insurance Requirements</i>), 6.1 (<i>Mobilisation</i>), 8.2 (<i>Reports and Records</i>), 8.5 (<i>Exit Management</i>) and 8.6 (<i>Business Continuity and Disaster Capability</i>);</p>
“Authority System”	<p>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 (if any) 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;</p>
“Authority to Proceed” or “ATP”	<p>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;</p>
“Baseline Security Requirements”	<p>the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>) as updated from time to time by the Authority and notified to the Supplier;</p>
“BCDC Plan”	<p>any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;</p>
“BCDC Services”	<p>any services set out in Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;</p>

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“BPSS”	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
Central Government Body”	<p>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:</p> <ul style="list-style-type: none">(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;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.3 (<i>Change Control Procedure</i>);
“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 8.3 (<i>Change Control Procedure</i>);
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to;</p> <ul style="list-style-type: none">(a) the pricing of the Services;(b) the details of the Supplier's IPRs; and(c) the Supplier's business and investment plans; <p>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;</p>
“Confidential Information”	<ul style="list-style-type: none">(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 to:<ul style="list-style-type: none">(i) the Disclosing Party Group; or

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- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) End-Customer Data;
- (c) 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;
- (d) 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
- (e) 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

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2. failure to pay any Sub-contractor as required pursuant to Clause 10.17 (*Supply Chain Protection*);

“Connected Company”	in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
“Contract Change”	any change to this Agreement, for the avoidance of doubt excluding any Operational Change;
“Contract Year”	<p>(a) a period of twelve (12) months commencing on the Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“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 Relevant Data Protection Laws;
“Costs”	has the meaning given in Schedule 7.1 (<i>End-Customer Fees</i>);
“Cost Model”	any model set out in Annex 4 (<i>Cost Model</i>) of Schedule 7.1 (<i>End-Customer Fees</i>) as may be amended from time to time in accordance with this Agreement, which sets out the underlying principles which make up the Charges;
“Counter Notice”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Critical KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Credit Rating Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“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

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	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 Officer”	has the meaning given in the Relevant Data Protection Laws;
“Data Subject”	has the meaning given in the Relevant Data Protection Laws;
“Data Subject Access Request”	a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data;
“Default”	<p>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:</p> <ul style="list-style-type: none">(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, <p>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;</p>
“Delay”	<ul style="list-style-type: none">(a) a delay in the Achievement of a Milestone by its Milestone Date; or(b) a delay in the design, development, testing or mobilisation of a Deliverable by the relevant date set out in the Mobilisation Plan or a Project Plan;
“Deliverable”	a part of the Services 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, as identified in the Mobilisation Plan or Project Plan;
“Detailed Mobilisation Plan”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
“Disclosing Party”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);

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“Disclosing Party Group”	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(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;</p>
“Dispute”	<p>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;</p>
“Dispute Notice”	<p>a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;</p>
“Dispute Resolution Procedure”	<p>the dispute resolution procedure set out in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);</p>
“Documentation”	<p>descriptions of the Services and KPIs, 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:</p> <p>(a) is required to be supplied by the Supplier to the Authority under this Agreement;</p> <p>(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;</p> <p>(c) is required by the Supplier in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of providing the Services;</p>
“DOTAS”	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes or those</p>

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who use them to tell HMRC of any 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 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005;

“DPA 2018”

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 date on which this Agreement is signed by both Parties;

“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;

“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;

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	<ul style="list-style-type: none">(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;
“End-Customers”	the customers to whom the Supplier supplies the output of the Services to, whether tobacco industry customers or otherwise;
“End-Customer Data”	any and all information supplied by End-Customers to the Supplier in respect of the Supplier’s provision of the Services to them, including both traceability and registration data, together with any and all information about or relating to End-Customers generated by the Supplier in respect of the Supplier’s provision of the Services;
“End-Customer Fees”	the fees (or, in relation Schedule 7.1, the “Total cost” identified in columns B and C of the spreadsheet embedded in Schedule 7.1 (<i>End-Customer Fees</i>)) that the Supplier may charge to the End-Customers and as those Fees are calculated and capped in accordance with Schedules 7.1 (<i>End-Customer Fees</i>). The Authority shall not be included as an End-Customer;
“Escalation Meeting”	has the meaning given in Clause 29.1
“Escalation Notice”	has the meaning given in Clause 29.1
“Escalation Process Trigger Event”	<ul style="list-style-type: none">(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;(b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event;(c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

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	(d) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; and/ or
	(e) Rectification Plan Failure.
“Estimated Year 1 Fees”	the estimated End-Customer Fees payable by End-Customers of the Services during the first Contract Year, as set out in the Financial Model;
“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 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Final Termination Warning Notice”	has the meaning given in Clause 33.4;
“Financial Distress Event”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Service Continuity Plan”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Model”	means the model in which the Charges are set out, as set out in Annex 1 (<i>Financial Model</i>) of Schedule 7.1 (<i>End-Customer Fees</i>) as may be amended from time to time in accordance with this Agreement;
“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

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	reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or 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 9.1 (<i>Staff Transfer</i>);
"GDPR"	The General Data Protection Regulation (EU) 2016/679;
"General Anti-Abuse Rule"	(a) the legislation in Part 5 of the Finance Act 2013; (b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and (c) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax;
"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"	any goods or equipment to be supplied by the Supplier as part of the Services;
"Government Controlled Company"	any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law and controlled by the Customer.
"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 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;

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“Guarantor”	[<i>insert name</i>], a company registered in [<i>insert country</i>] with company number [<i>insert company number</i>] and whose registered office is at [<i>insert registered address</i>];
“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 8.3 (<i>Change Control Procedure</i>);
“Incumbent Supplier”	any supplier to the Authority of services similar to the Services prior to the Mobilisation Commencement Date or Operational Service Commencement Date (as applicable);
“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 Controller”	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);
“Insolvency Event”	(a) the other Party 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

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- 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) the other Party 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 other Party with one or more other companies or the solvent reconstruction of that other Party;
- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party 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 the other Party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party 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 other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - (ii) an application is made to court, or an

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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 the other Party;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party 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 other Party has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to the other Party 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;

“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 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;

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“IT Environment”	the Authority System (if any) 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 Mobilisation Plan or any Project Plan as key milestones (if any) and in respect of which Delay Payments may be payable in accordance with Part C of Schedule 7.1 (<i>End-Customer Fees</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Schedule 9.2 (<i>Key Personnel</i>), if such Schedule is used;
“Key Roles”	any roles described as a Key Role in Schedule 9.2 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with that Schedule;
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none">(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) ten per cent (10%) 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”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

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“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“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;
“Mandatory Wage”	the statutory minimum hourly rate of pay including the National Living Wage and National Minimum Wage as set by the Crown;
“Management Information”	any management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>End-Customer Fees</i>), Schedule 7.5 (<i>Financial Reports and Audit Rights</i>) and/or Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Measurement Period”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Milestone”	an event or task described in the Mobilisation Plan, a Project Plan or an Exit 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 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Mobilisation Plan or a Project Plan by which the Milestone must be Achieved;
“Mobilisation”	the activities to be performed in accordance with Schedule 6.1 (<i>Mobilisation</i>) in order that the Supplier is able to commence the provision of the Operational Services in accordance with the terms of this Agreement;
“Mobilisation Plan”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);

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"Mobilisation Commencement Date"	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
"Models"	the Financial Model and the Cost Model and "Model" shall be interpreted accordingly;
"Month"	a calendar month and "monthly" shall be interpreted accordingly;
"Non-Party IPRs"	any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Project Specific IPRs;
"Notifiable Default"	has the meaning given in Clause 27.2 (<i>Rectification Plan Process</i>);
"Occasion of Tax Non-Compliance"	<p>(a) any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;</p> <p>(ii) the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>(b) the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;</p> <p>(c) For these purposes :</p> <p>(i) a return is "submitted" when it is first submitted to the Relevant Tax Authority</p>

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and any subsequent amendments or re-submissions are to be ignored; and

- (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible.

"Operational Change"

any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the End-Customer Fees ;
- (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 (if any) or interoperability (if any) 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 Mobilisation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and
- (b) where the Mobilisation Plan or a Project 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 2.1 (*Services Description*), if any, which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (*Optional Services*);

"Order"

any Goods or Services which have been ordered by the Authority in accordance with the procedures set out in Schedule 6.3 (*Projects and Ordering*) if such Schedule is used;

"Other Supplier"

any other third party which supplies services to the Authority but excluding the Incumbent Suppliers;

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“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 33.2(b) (<i>Termination by the Authority</i>) or 33.6 (<i>Termination by the Supplier</i>);
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Persistent Breach”	means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice;
“Personal Data”	personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement;
“Personal Data Breach”	has the meaning given in the GDPR;
“Process”	has the meaning given to it under the Relevant Data Protection Laws and “ Processed ” and “ Processing ” shall be construed accordingly;
“Processor”	has the meaning given in the Relevant Data Protection Laws;
“Processor Personnel”	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;
“Prohibited Act”	<ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">(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;

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- (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; 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;

“Prohibited Transaction”

has the meaning given in Clause **Error! Reference source not found.** (*Use of Off-shore Tax Structures*);

“Project Plan”

the agreed project plan for an Order set out in, attached to or included by reference in the relevant Order;

“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;
- (b) the End-Customer Data; and/or
- (c) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include the System IPRs or Supplier Background IPRs;

“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 such measures adopted by it;

“Quality Plans”

has the meaning given in Schedule 2.3 (*Standards*) if such Schedule is used;

“Quality Standards”

the quality standards published by BSI British Standards (the National Standards Body of the United Kingdom), the International Organisation for Standardization or other reputable or equivalent

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	body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with including BS EN ISO 27001 or any equivalent standard which is generally recognised as having replaced it (as applicable), as may be further detailed in the Services Description;
“Quarter”	the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement) and “quarterly” shall be interpreted accordingly;
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<ul style="list-style-type: none">(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Agreement of the Rectification Plan</i>);(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (<i>Agreement of the Rectification Plan</i>);(c) the Supplier failing to rectify a material Default within the later of:<ul style="list-style-type: none">(i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (<i>Notification</i>); 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) where a Rectification Plan has been implemented a KPI Failure re-occurring in respect of the same KPI and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following

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	<p>the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete);</p> <p>(e) the Supplier not Achieving any Key Milestone by the expiry of the Delay Deduction Period; and/or</p> <p>(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;</p>
“Rectification Plan Process”	the process set out in Clauses 27.5(<i>Submission of the draft Rectification Plan</i>) to Clause 27.9 (<i>Agreement of the Rectification Plan</i>);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>), if such definition is used;
“Reimbursable Expenses”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Relevant Data Protection Laws”	<p>(a) the Data Protection Act 2018;</p> <p>(b) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;</p> <p>(c) any other applicable Laws relating to the processing of personal data and privacy; and</p> <p>(d) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws;</p>
“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 but excluding any IPRs in the Authority Background IPRs;
“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;

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“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 31.2 (<i>Authority Cause</i>);
“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 30.1(a) (<i>Step-In Rights</i>);
“Security Management Plan”	the Supplier’s response to the Authority’s security questionnaire as attached as Annex 2 of Schedule 2.4 (<i>Security Management</i>) and as may be subsequently developed and revised pursuant to Schedule 2.4 (<i>Security Management</i>);
“Service Period”	<p>a calendar month, save that:</p> <ul style="list-style-type: none">(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;
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant KPI in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>), if such Annex is used;

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“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>) and including the provision of any Goods;
“Services Description”	the services description set out in Schedule 2.1 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <ul style="list-style-type: none">(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 <p>(b) where:</p> <ul style="list-style-type: none">(i) any part of the Supplier System is situated; or(ii) any physical interface with the Authority System takes place;
“Software”	any software which is proprietary to the Supplier or to a third party (or an Affiliate of the Supplier) or any open source software which, in any case, is or will be used by the Supplier for the purposes of providing the Services and any Project Specific IPRs which are software;
“Staffing Information”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“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 created specifically for the purposes of this Agreement to any software which will be or is proposed to be used by the Supplier for the purposes of providing the Services;
“Step-In Notice”	has the meaning given in Clause 30.1 (<i>Step-In Rights</i>);

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“Step-In Trigger Event”	<ul style="list-style-type: none">(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 30 (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 30.4(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.4 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“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”	<p>any third party with whom:</p> <ul style="list-style-type: none">(a) the Supplier enters into a Sub-contract; or(b) a third party under (a) above enters into a Sub-contract, <p>or the servants or agents of that third party;</p>
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Processor related to this

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	Agreement;
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<p>(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</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement.</p> <p>which in each case is or will be used before or during the Term for designing, testing, implementing or providing the Services;</p>
“Supplier Equipment”	the 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 Executive”	means the Supplier Personnel listed as level 3 escalation point in Schedule 8.1 (<i>Governance</i>);
“Supplier Non-Performance”	has the meaning given in Clause 31 (<i>Authority Cause</i>);
“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”	in relation to a period or a Milestone (as the context requires), the difference between the total End-Customer Fees (in nominal terms but excluding any Deductions) and total Costs (in nominal terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total End-Customer Fees over the same period or in relation to the relevant Milestone and expressed as a percentage;
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3;

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“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	any information and communications technology system used by the Supplier in implementing and performing the Services including the Software and the Supplier Equipment (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none">(a) the Supplier’s level of performance constituting an Unacceptable KPI Failure or a Critical KPI Failure;(b) the Supplier’s level of performance constitutes a Persistent Breach;(c) the Supplier committing a material Default which is irremediable;(d) as a result of the Supplier’s Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause Error! Reference source not found. (<i>Financial Limits</i>);(e) a Rectification Plan Failure;(f) where a right of termination is expressly reserved in this Agreement, including pursuant to:<ul style="list-style-type: none">(i) Clause 10.11 (<i>Tax Compliance</i>);(ii) Clause 10.16 (<i>Use of Off-shore Tax Structures</i>);(iii) Clause 14.5 (<i>Income Tax and National Insurance Contributions</i>);(iv) Clause 19 (<i>IPRs Indemnity</i>);(v) Clause 29 (<i>Escalation Process</i>);(vi) Clause 35.5 (<i>Modern Slavery Act</i>);(vii) Clause 39.6(b) (<i>Prevention of Fraud and Bribery</i>);(viii) not used;(ix) Paragraph 3 of Schedule 7.4 (<i>Financial Distress</i>); and/or(g) the representation and warranty given by the Supplier pursuant to Clause 3.1(f) (<i>Warranties</i>) being materially untrue or misleading;(h) the Supplier committing a material Default or failing to provide details of steps being taken

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- and mitigating factors pursuant to Clauses 10.6 to 10.12 (*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:
 - (i) Clause 5.5(g) (*Services*);
 - (ii) Clauses 10.6 to 10.12 (inclusive) (*Promoting Tax Compliance*);
 - (iii) Clauses **Error! Reference source not found.** and 10.16 (*Use of Off-shore Tax Structures*);
 - (iv) Clause 23 (*Protection of Personal Data*);
 - (v) Clause 22 (*Transparency and Freedom of Information*);
 - (vi) Clause 21 (*Confidentiality*);
 - (vii) Clause 35 (*Compliance*);
 - (vi) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or
 - (iii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
 - (j) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
 - (k) 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);
 - (l) 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 six (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;

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- (m) a change of Control of a Key Sub-contractor unless, within six (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 Schedule 4.3 (*Notified and Key Sub-contractors*);
- (n) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*);
- (o) 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;
- (p) the Supplier:
 - (i) commits an irremediable breach of the Admission Agreement; or
 - (ii) commits a breach of the Admission Agreement 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 giving particulars of the breach and requiring the Supplier to remedy it; or
- (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.

“System IPRs”

- (a) the Specially Written Software;
- (b) the source code and the object code of the Specially Written Software; and
- (c) 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,

for the avoidance of doubt excluding any End-Customer Data.

“TAAR” or “Targeted Anti-Avoidance Rule”

provision(s) in any legislation which seeks to prevent avoidance of any Tax;

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“Target Performance Level”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Tax”	<p>(a) all forms of tax whether direct or indirect;</p> <p>(b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</p> <p>(c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and</p> <p>(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
“Tax Revenue”	any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier;
“Term”	the period of five (5) years commencing on the Effective Date or on earlier termination of this Agreement in accordance with its terms;
“Termination Assistance Notice”	has the meaning given in Schedule 8.5 (Exit Management);
“Termination Assistance Period”	has the meaning given in 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 on a specified date and setting out the grounds for termination;
“Termination Warning Notice”	has the meaning given to it in Clause 33.3;
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Third Party IPRs”	Intellectual Property Rights owned by a third party which are or will be used (or otherwise made available) by the Supplier before or during the Term

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	for designing, testing implementing or providing the Services;
“Third Party Provisions”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“UK”	the United Kingdom;
“UK GAAP”	the Generally Accepted Accounting Practice in the UK which is the body of accounting standards and other guidance published from time to time by the UK’s Financial Reporting Council;
“Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

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SCHEDULE 2.1

SERVICES DESCRIPTION

1. GENERAL

- 1.1. The Supplier must meet all requirements as specified within Annex 1: HMRC's Tobacco Track and Trace UK Supplier Solutions Specification contained within this schedule.

ANNEX 1: HMRC'S TOBACCO TRACK AND TRACE UK SUPPLIER SOLUTIONS SPECIFICATION

Tobacco Track and Trace UK Supplier Solutions Specification



HM Revenue
& Customs



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1. Definitions and acronyms

Expression or Acronym	Definition
Anti-Tampering Device (ATD)	Device allowing for the recording of the verification process following the application of each unit level unique identifier by means of a video or a log file, which once recorded cannot be further altered by an economic operator.
CIR	Commission Implementing Regulation 2018/574/EU
EO	Economic Operator. Any natural or legal person who is involved in the trade of tobacco products, including for export, from the manufacturer to the last economic operator before the first retail outlet.
Eoid	Economic Operator Identifier code
FCTC	World Health Organization Framework Convention on Tobacco Control
HMRC	Her Majesty's Revenue and Customs 'the Authority' (the Contracting Authority)
ITP	World Health Organization Framework Convention on Tobacco Control Protocol to Eliminate the Illicit Trade in Tobacco Products - Also known as the Illicit Trade Protocol
KPI	Key Performance Indicator
NI Protocol	Northern Ireland Protocol (to the UK/EU Withdrawal Agreement)
RoW	Rest of World. Other countries outside the UK.
SLA	Service Level Agreement
TPD	EU Tobacco Products Directive 2014/40/EU
Transition period	The period in which the UK was no longer a member of the EU but remained a member of the single market and customs union, and therefore subject to EU rules. It started when the UK left the EU on 31 January 2020 and ended on 31 December 2020.
UID	Unique Identifier. The alphanumeric code enabling the identification of a unit packet or an aggregated packaging of tobacco products.
UK Supplier	The supplier of the UK's Tobacco Track and Trace system.

2. Introduction

This technical specification sets out the requirements for the UK Tobacco Track and Trace system to be provided from 01 July 2022. The UK Tobacco Track and Trace system requires

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the UK Supplier to operate both as the UK UID Issuer and Data Repository supplier. The system is a complex requirement based on both legislative and performance metrics, as detailed within this specification.

The total contract duration will be for five (5) years from the date of contract signature with no optional extension period.

3. **Background**

This section sets out the relevant background on the UK Tobacco Track and Trace system.

3.1 **Regulatory Background to the UK Tobacco Track and Trace System**

The following legislation is relevant to the introduction of the UK Tobacco Track and Trace system in the UK. The UK Supplier must ensure the UK Tobacco Track and Trace system complies with all aspects of the legislation set out below:

- The UK ratified the [World Health Organization Framework Convention on Tobacco Control \(FCTC\) Protocol to Eliminate Illicit Trade in Tobacco Products](#) hereafter referred to as the Illicit Trade Protocol (ITP) in June 2018. The objective of the ITP is to eliminate all forms of illicit trade in tobacco products, in accordance with Article 15 of the FCTC. A key component of the ITP is the introduction of systems to track and trace tobacco products through the supply chain and, in the long-term, share data between parties to the Protocol.
- The European Union (EU) separately ratified the ITP and, through the [Tobacco Products Directive 2014/40/EU \(TPD\)](#), introduced an EU-wide system in 2019, which the UK joined. The Directive lays down rules governing the manufacture, presentation and sale of tobacco and related products. Article 15 of the Directive requires all unit packets of tobacco products to be marked with a unique identifier and for their movements through the EU to be recorded. Article 16 requires the same products to be marked with security features. The provision of security features does not form part of this contract. Article 23 deals with enforcement of the rules and requires non-compliant product not to be placed on the market.
- [Commission Implementing Regulation \(\(EU\) 2018/574\) \(CIR\)](#) - Prescribes the technical standards for the operation of the EU traceability system and implements Article 15 of TPD
- [Commission Delegating Regulation \(\(EU\) 2018/573\) \(CDR\)](#) - Prescribes key elements of data storage contracts to be concluded as part of a traceability system and implements Article 15 of TPD
- [The Tobacco Products \(Traceability and Security Features\) Regulations 2019 \(SI 2019/594\) \('the 2019 Regulations'\)](#) - Implements the TPD in the UK, where not already implemented by the Regulations listed above
- [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020](#) (TSSFR 2020) amends and retains CIR 2018/574 in UK law and:
 - applies the retained CIR with amendments to the UK in order to establish, and set the standards for operating a UK traceability system;
 - preserves the domestic 2019 regulations with necessary modifications for the purposes of the Northern Ireland Protocol and Northern Ireland's continued involvement in the EU Track and Trace system;
 - amends the 2019 Regulations for the purposes of the Northern Ireland Protocol to ensure the security feature scheme continues to operate in respect of products supplied in Northern Ireland; and

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- makes provision to ensure tobacco products manufactured before the end of the transition period and marked with a traceability mark required for lawfully placing on the UK market, can continue to move freely through the UK
- The TPD is listed in Annex 2 to Article 5 of the [Northern Ireland Protocol](#) to the Withdrawal Agreement. This means that the TPD continues to apply in Northern Ireland after the end of the transition period. The CIR, CDR and CID, which support the implementation of the TPD, continue to be directly applicable in Northern Ireland from the end of the transition period under the [European Union \(Withdrawal\) Act 2018](#). The Northern Ireland Protocol ensures the 2019 Regulations as well as the CIR, CDR and CID are incorporated into domestic law.

The solution provided must fully deliver all the necessary requirements listed in the legislation above, other related documents published on the Official Journal of the European Union, in respect of Northern Ireland and any additional requirements within this specification.

3.2 Background to UK Tobacco Track and Trace System

Prior to leaving the EU, the UK was part of an EU-wide track and trace system. Following the UK's exit from the EU and the end of the transition period, the UK has established a stand-alone system. The UK system covers tobacco products manufactured in or imported into the UK and captures UK traceability data in a UK data repository. The UK system operates in a similar way to the EU system with 3 key differences:

1. The UK system does not require manufacturers to have their own primary data repositories. All UK traceability data is transmitted via a routing service directly to a central UK data repository
2. Where a product destined for the UK is already marked with a UID from the country of manufacture outside of the UK, the UK UID is digitally associated (also termed 'code-paired') with the marked UID and not printed on the packet
3. In accordance with the Northern Ireland Protocol, traceability data for Northern Ireland must be captured in the EU system as well as the UK system

Approximately 95% of tobacco products consumed in the UK are manufactured in the EU. This means that:

- tobacco products moving between the EU and Great Britain are treated as imports and exports in the same way as the UK's treatment of Rest of World (RoW) goods. For more detailed import/export scenarios and associated scanning requirements, please see [Annex 1](#).
- in accordance with the Northern Ireland Protocol, Northern Ireland remains aligned with EU rules on the movement of goods which can move freely between the EU and Northern Ireland (i.e. they are not treated as imports and exports). Tobacco products moving between Northern Ireland and the RoW (including Great Britain) are treated as imports and exports.

There are separate track and trace requirements for tobacco products moving between the EU and Northern Ireland. These are set out in section 4.6 below.

3.3 Indicative Volumes

The following figures provide an indication of the demand for the UK system to inform bids and are for illustration only. They are based on the most recent figures we have about the UK system, as at 30 April 2021:

- there are over 48,000 economic operators and over 72,000 facility and machines currently registered in the UK registry

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- for the period of 20 May 2019 to 30 April 2021, 3.3 billion UIDs have been sold for UK products, approximately 1.65 billion per annum
- from 01 January 2021 to 30 April 2021, on average, approximately 25 million messages have been transmitted to the UK system each month. Peak volume of transmission has been approximately 1,500 messages per minute.

The table below shows a breakdown of the average highest volume of messages transmitted to the UK system by type during 2021 to April 2021:

Message Purpose	Monthly volume
Pairing of other countries UIs and UK UIDs	5,700,000
Application of unit level UIDs	6,275,000
Application of aggregated UIDs	9,600,000
Dispatch from a facility	413,000
Arrival at a facility	83,000
Issuing of invoice	414,000
Receipt of payment	215,000

The indicative figures given above are subject to change. For the avoidance of doubt, this contract will not be limited to or commit to generate the indicative volumes provided above. Manufacturing activity will naturally fluctuate over time. Volumes seen in the UK system in 2021 will have been impacted by EU exit, COVID-19 and the increase in tobacco products duty as announced in the recent budget. Section 4.5 below provides a more comprehensive view of expected UK system volumes.

4. System Functionality

This section sets out the required functionality for the UK Tobacco Track and Trace system. The UK Supplier must ensure that their solution is fully compliant with the requirements as set out within this section.

Within this section, HMRC has signposted relevant legislative provisions against individual components of the UK Track and Trace system. For the avoidance of doubt, the provisions

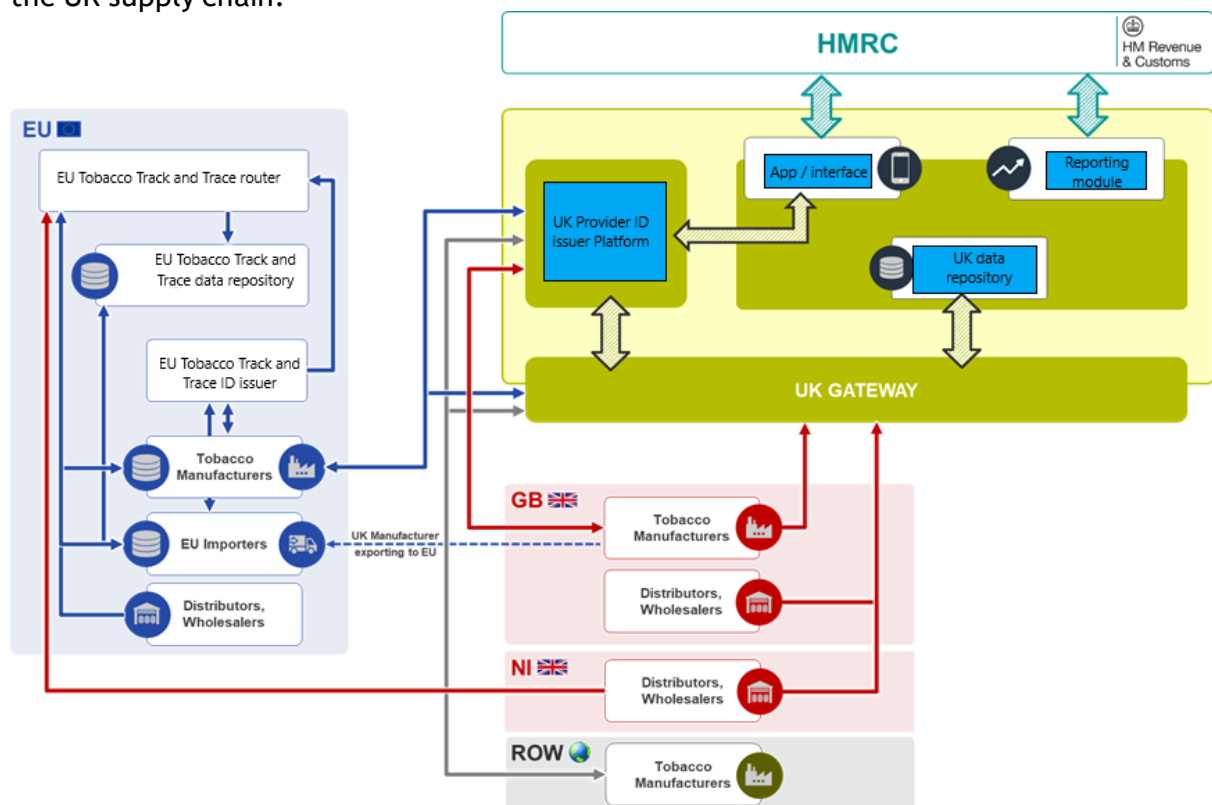
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referenced within this section are not exhaustive and the UK Supplier is responsible for making sure each element of the UK Track and Trace system is also fully compliant with all legislation as specified within section 3.

Suppliers should describe in detail their proposed end-to-end UK Tobacco Track and Trace service delivery model, demonstrating the system architecture used to deliver the key functions identified at 4.2 - 4.7 below. This should include a service delivery process map and accompanying narrative to evidence how you will comply with the obligations placed on the UK Supplier as set out in the applicable EU and UK legislation and within this specification.

4.1 High-Level Process Flow Map

The below image provides a high-level process-flow map of the end-to-end UK Tobacco Track and Trace system. The image illustrates the stages at which the system provided by the UK Supplier must interact with other key systems as tobacco products progress through the UK supply chain.



4.2 UID Issuer Services

UK Suppliers must read and comply with Articles 3-20 of CIR 2018/574 and Schedule 1, Chapters 2 & 3 of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 as may be supplemented by the below requirements.

Background

Tobacco manufacturers and importers, along with all other businesses in the tobacco supply chain, must be registered with the UK Supplier to get a unique economic operator ID (EOID). Once registered, a manufacturer must also register for Machine IDs (MID) for machines integral to the manufacturing process. All businesses in the tobacco supply chain must register for Facility IDs (FID) for all premises where they manufacture, store or sell their products. New IDs (either EOIDs, MIDs or FIDs) are provided free of charge by the UK

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Supplier. To date, over 48,000 economic operators and over 72,000 facilities and machines are registered in the UK system.

Each packet of cigarette and hand rolling tobacco products manufactured in, or imported into the UK, must have a UK UID associated with the product, provided by the UK Supplier. Where cigarette and hand rolling tobacco products imported into the UK are already marked with a UID issued by another country operating a track and trace system, such as in the EU, the UK UID is not printed on the packet. Instead, it is digitally associated to the UID already marked on the packet. This is a mandatory requirement.

UIDs are in the form of an alphanumeric code. They can be either unit packet UIDs or aggregate UIDs. An aggregate UID is used for anything that holds more than one unit packet e.g. cartons, master cases, pallets, trailers and shipping containers. It is then linked to the unit packets that it contains. Unit packet UIDs are provided by the UK supplier for a charge to registered tobacco manufacturers and importers. Aggregate UIDs can be either purchased from the UK Supplier or generated by registered tobacco manufacturers and importers themselves.

Tobacco manufacturers and importers will be responsible for encoding the UK UID and ensuring its correct application. The exception is where a physical UK UID is requested, in which case it will be the responsibility of the UK Supplier to encode the UID.

ID Issuer requirements

The UK Supplier must:

- Have a unique identification code. The code shall be composed of alphanumeric characters, must comply with [ISO 15459-2:2015](#) and be registered and issued by the registration body designated by the ISO/IEC Registration Authority
- Maintain a registry of UK economic operators, facilities and machines, including the transfer of the existing UK registry from the incumbent supplier, preventing the need for businesses in the supply chain to re-register
- Be able to register new economic operators, facilities and machines and issue them with Identity Codes (EOIDs, MIDs & FIDs) upon request
- Have a real-time, user-friendly process for registering a user as an economic operator and delivering UIDs (where the UID is electronic)
- Work closely with HMRC and other delegated authorities to deliver a robust and effective compliance regime which enables the deregistration of IDs when requested to do so by HMRC in duly justified cases and prevent the re-registration of non-compliant economic operators
- Be responsible for the generation of UIDs, using encryption or compression, for unit packets and aggregated packaging for the UK system, as well as the EU system in respect of Northern Ireland, linking individual and aggregate UID levels where required.
- Demonstrate the ability for printed UIDs to have a standard length of 26 alphanumeric characters or less
- Issue UID codes electronically within a maximum of 2 working days from receipt of a request and within 10 working days for physical delivery
- Issue UID codes electronically or physically depending on the request. (Note, both forms of issuing UID codes must be made available at the same cost)
- Provide a means for digitally associating a UK UID with another country or territories UID so that the UK UID does not need to be physically marked on the packet (see digital association below)
- Charge a fixed fee per 1000 UIDs provided, either digital or physical (see section 5.3)

UIDs provided by the UK Supplier must have:

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- In the first position, the alphanumeric characters that constitute their unique ID Issuer identification code
- An alphanumeric sequence whose probability to be guessed shall be negligible and in any case lower than one in ten thousand
- A standard length, when printed, of 26 alphanumeric characters or less
- A code (product code) containing manufacturing and shipment information as listed at **Article 8 of CIR 2018/574**

For more detail on the required structure of a UID, please see **Annex 2**

Suppliers must inform HMRC of algorithms used for the encryption and/or compression of UIDs. Unit level UIDs must not be reused. UIDs must be unique to the UK product (pre-existing codes from other systems cannot be reused). UK UIDs which are to be digitally associated with another country's UID must be paired prior to application of codes to the product, as explained in the following section.

4.3 Digital Association of UID codes

Potential UK Suppliers must read and comply with Articles 5-9 of the [Commission Implementing Regulation](#), and schedule 1, chapter 2 & 6 of the [UK Traceability and Security Features Regulations 2020](#) as may be supplemented in the below requirements:

Digital Association Background

Tobacco manufacturers and importers must obtain UK UID codes from the UK Supplier for product supplied onto the UK market. The UK UID code must be printed on the packet except where imported tobacco product already has a traceability code printed on the packet from the country of manufacture (as is the case with imports from the EU). In this scenario, to avoid having two track and trace codes printed on the packet, the UK code must be digitally associated or paired with the EU (or RoW) code and not printed on the packet.

Tobacco manufacturers obtain UK UIDs in the normal way and transmit a code-pairing message to the UK system prior to manufacture and a code application message at the point of manufacture.

An example of how code-pairing would be required for a product manufactured in the EU is demonstrated in the following steps:

- Manufacturer purchases EU UIDs
- Manufacturer purchases UK UIDs from the UK Supplier, providing the EU UID codes to which the UK codes should be paired
- UK Supplier provides manufacturer with UK UIDs
- Manufacturer transmits code-pairing message(s) to the UK prior to application of EU codes to products
- Manufacturer generates 2-D data matrix and timestamp, printing both on the packet along with the EU UID
- Manufacturer's Anti-Tampering Device (ATD) captures application of codes which have already been paired
- Manufacturer transmits separate application and aggregation messages concurrently to the EU and UK systems

The code pairing event creates the link between the manufacturing events and the product data captured when the UK UIDs are ordered.

Digital Association Requirement

The UK Supplier must:

- Provide a means for digitally associating a UK UID with another country or territories UID so that the UK UID does not need to be physically marked on the packet

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- Provide economic operators with digitally associated UK UID codes
- Ensure that digital association occurs prior to application of codes to products
- Ensure that the UK UID code is traceable via the country of manufacture code printed on the packet
- Ensure Unit level UIDs are encoded with a data carrier which meets the requirements detailed in **Article 21 of CIR 2018/574**
- Ensure that the information contained in the UID is capable of being recorded and transmitted by all relevant economic operators
- Guarantee the compatibility of the UID with external components such as scanning devices, ensuring that existing scanning equipment can be reused

4.4 Routing of data

Routing of Data Background

All data regarding cigarettes and hand rolling tobacco products manufactured in and imported into the UK must be routed to the UK data repository. In addition, all data regarding such tobacco products and details of economic operators, facilities and machines in NI must be routed to the EU repository system.

Routing of Data Requirements

UK Suppliers must read and comply with Article 29 of CIR 2018/574 & Schedule Chapter 5 (38) of UK TSSFR 2020 or as may be supplemented in the below requirements:

The UK Supplier must provide a routing service which:

- Directs traceability and invoice data from UIDs to a UK data repository
- Ensures that UIDs are compliantly encoded with a human readable data carrier
- Provides instant feedback on the validity of a UID and the message sequencing when the UID is scanned
- Enables tobacco products in Northern Ireland to be tracked under the UK and EU systems through a single scan of the product.
- Ensures data regarding the movement and financial transactions related to tobacco products manufactured in, or imported into Northern Ireland, is routed to both the UK and EU data repositories
- Enables HMRC and any other authorities appointed by HMRC to track and trace the movement of legitimate cigarette and hand rolling tobacco products and determine when a product was diverted onto the illicit market, whether it was imported into, exported from or manufactured in the UK

4.5 Data Repository System

Potential UK Suppliers must read and comply with Articles 24-30 of CIR 2018/574 & Chapter 5, TSSFR 2020 as may be supplemented in the below requirements.

In addition, Annex 2 of CIR 2018/574 captures a comprehensive list of the messages which must be transmitted within the UK Track and Trace system. Schedule 1, Chapter 6 of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 additionally requires that a code-pairing message must be transmitted to the UK system prior to application of codes to the product.

Scanning Background

Economic operators are required to obtain EOIDs and FIDs from the UK Supplier and track the movement of cigarettes and hand rolling tobacco products they handle within the supply chain. Specifically, economic operators must scan the tobacco when:

- the unit packet UID is applied to the item
- the aggregated packaging UID is applied to the item
- the product arrives at their premises

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- the product leaves their premises

Economic operators must also transmit relevant invoicing data to the UK system.

The UK system matches the economic operator EOID and FIDs with the UIDs for the products they handle. This enables the movement of the product through the supply chain to be tracked and traced. The matching takes place whenever the product is scanned using a hand-held scanner or other device.

Tobacco manufacturers and importers are required to provide economic operators with the necessary equipment and software that involved in the trade of their products, up to the first retailer who makes the products available for sale to the public, with equipment and software that:

- scan the products; and
- electronically send scanned information to the UK data repository and EU repository in respect of Northern Ireland.

Scanning Requirement

The UK Supplier must:

- allow for the reuse of existing, industry standard scanning equipment, subject to any necessary software updates, minimising additional costs wherever possible
- provide the technical specifications for solution providers of scanning equipment to ensure their software sends data to the UK router
- provide user-friendly feedback messages to economic operators at the point of scanning a code to inform if it is valid

Potential UK Suppliers must read Articles 21 & 22 of CIR 2018/574

Data Repository Background

The information routed by the UK Supplier to the UK data repository will be accessible by HM Revenue and Customs (HMRC) and any other authorities HMRC decide to appoint. This will make it possible to track and trace the movement of legitimate cigarette and hand rolling tobacco products and determine when a product was diverted into the illicit market, whether it was imported into, exported from or manufactured in the UK.

For indicative capacity volumes please refer to section 2.4 of this Specification.

Data Repository Requirement

The UK Supplier must establish a data repository system for the purpose of storing data relating to tobacco products manufactured in and imported into the UK which:

- has permanent capacity to handle 5,000 messages per minute and 75 million messages per month
- has the flexibility to increase capacity to handle an exceptional peak of 250 million messages per month
- is capable of returning validation messages against the volumes above in less than 1 second 99% of the time
- has continuous availability of all components and services with a monthly uptime of at least 99.5 %
- stores data held under this contract within the UK wherever possible. The UK Supplier may propose storing data within the EEA where UK storage is not possible
- provides automatic status messaging to economic operators

Where the UK Supplier builds the UK system on an existing system or solution delivered to a third party, the UK Supplier must:

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- ensure the system fully meets the UK's unique requirements as set out in this specification;
- ensure that UK data will be guarded by security procedures and systems ensuring that access to the repositories and download of the data stored therein is only granted to HMRC or other nominated authorities, i.e., UK data is stored independently;
- ensure that their access to data is limited to data reporting requirements captured in section 4.6 below and that data is not used for any purpose not captured in the legislation listed at section 3 above.
- ensure that the solution proposed for the UK is capable of handling 5,000 messages per minute and 75 million messages per month in isolation, i.e. without the need to depend on capacity delivered to a third party
- ensure the system meets security requirements as detailed in **Article 36 of CIR 2018/574**

4.6 Northern Ireland (NI)

Potential UK Suppliers must read and comply with UK TSSFR 2020, Parts 3&4 & Schedule 3) as may be supplemented in the below requirements:

Northern Ireland Background

UK system volumes for 2021 suggest that products destined for Northern Ireland account for 5% of all products destined for the UK market. In accordance with the Northern Ireland Protocol, product manufactured in or destined for Northern Ireland must be tracked in both the EU system as well as the UK system in the following manner:

- manufacturers and importers purchase UIDs from the UK Supplier which must be marked on the packet. This includes where product is manufactured in the EU. In this scenario, code pairing is not allowed and manufacturers do not need to purchase UIDs from the EU country of manufacture.
- the UK Supplier issues UIDs with a Northern Ireland specific prefix (XI) which is used in both the EU and UK systems.
- as product moves through the EU it is tracked in the EU system only.
- where product is routed to Northern Ireland via Great Britain (GB), it is tracked in the UK system only from when it enters GB until it enters Northern Ireland.
- when product enters Northern Ireland, either directly or indirectly via GB, it is tracked in both the EU and UK systems.
- traceability data is sent separately to both the EU and the UK systems via one scan of the product

Northern Ireland Requirement

The UK Supplier must:

- share an up-to-date registry of economic operators, facilities and machines in relation to Northern Ireland, on an ongoing basis with the EU repository
- generate, issue and register new identifier codes (ID) for economic operators, facilities and machines upon request, updating both the UK registry and the NI registry in respect of the EU system
- be responsible for the generation of UIDs for unit packets for the EU system in respect of Northern Ireland
- ensure that data regarding the movement and financial transactions related to tobacco products manufactured in, or imported into Northern Ireland, are routed to both the UK and EU data repositories via one scan of the product
- issue NI UIDs with the XI prefix

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- deliver a system which ensures that when the product enters GB, it is tracked in the UK system only. When the product enters NI, it is tracked in both EU and UK systems
- keep pace with updates and changes to the EU system notified by either the EU sub-committee for track and trace or the supplier of the EU secondary repository

4.7 Data Reporting

Potential UK Suppliers must read and comply with Article 27 of CIR 2018/574 and UK Traceability and Security Features Regulations 2020 (Para 35) as may be supplemented in the below requirements:

Data reporting background

The UK Supplier is responsible for providing a comprehensive suite of data reporting tools which enables HMRC, and any other authority appointed by HMRC, to view traceability data and produce associated reports.

Data Reporting Requirement

The UK Supplier must

- Transfer existing UK traceability data for the period 1 January 2021 to 30 June 2022
- Maintain a UK registry, producing reports on volumes of EOs & facilities registered by type & geographical areas
- Capture each stage of the traceability journey for individual UID codes
- Provide an easily navigable graphical and non-graphical user interfaces that enable HMRC and other authorities designated by HMRC, to access and query the data stored in the repositories system, using all commonly available database search functions
- Provide app functionality enabling visibility of individual UID code traceability in the field
- Allow HMRC and other nominated authorities to retrieve any information concerning one or multiple UIDs
- Produce reports across all available data points such as by EO, type of EO, facility, product type, geographical area
- Provide instant availability of data - the overall time between the arrival of reporting activity data and its accessibility, via the graphical and non-graphical interfaces, to be no more than 60 seconds

The exact specification of reporting requirements will be agreed as part of mobilisation activity. See also section 6.2 below.

5. System Compliance

This section sets out further requirements that the UK Supplier must ensure the UK tobacco Track and Trace system is fully compliant with.

5.1 Independence

The UK Supplier must be independent from the tobacco industry as defined by article 15 of CIR 2018/574 and regulation 16 of The Tobacco Products (Traceability and Security Features) Regulations 2019:

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- legal form, organisation and decision making - cannot be a subsidiary of a manufacturer, under the control of the tobacco industry, nor can it be a minority shareholding of the tobacco industry.
- financial - Prior to the award of the contract, no more than 10% of the company's annual worldwide turnover over the past two calendar years may have been generated from goods and services supplied to the tobacco industry and no more than 20% in any subsequent year.
- absence of conflicts of interest with the tobacco industry, i.e. no-one in a management position may have worked in the tobacco industry in the last five years

Where the UK Supplier makes use of sub-contractors, they will be responsible for ensuring the same standards of independence are met by those sub-contractors.

The UK Supplier must provide and implement a plan to ensure that these strict independence criteria will be met and maintained and that any undue influence is avoided and reported without undue delay to HMRC. The UK Supplier must also provide HMRC with an annual declaration which confirms their ongoing independence. In order to demonstrate independence, we are requesting the audited accounts of the bidding company and the ultimate parent company, as well as internal management accounts prior to contract award (other information may also be provided if this better demonstrates compliance).

5.2 Future requirements

The UK Supplier must ensure that:

- The UK Track and Trace system has the flexibility to extend to other tobacco products such as cigars, cigarillos and chewing tobacco by May 2024, as required
- As set out in the ITP, arrangements for the exchange of track and trace data with other parties to the ITP will be introduced during the life of the contract, via a World Health Organization-led global information-sharing focal point.

5.3 Payment

All costs associated with the UK Tobacco Track and Trace system are to be met by the charge for the issuing of the UIDs to manufacturers and importers payable to the UK Supplier by the tobacco industry. This cost must account for all costs incurred to the UK Supplier for the entirety of the UK Supplier's responsibilities as set out within this Specification. No other fees may be charged for the UK system.

The agreed fee and fee adjustment mechanism will form part of the contract. No price rise may be introduced in the first 12 months. Price rises after the first 12 months will be restricted to the consumer price index.

All costs charged by the UK Supplier must be non-discriminatory and proportionate to the number of identifiers provided.

UIDs may only be sold at one fixed cost to registered manufacturers, irrespective of the mode of delivery (i.e. digital or physical UIDs), with consolidated invoicing. Weekly invoicing is the minimum requirement, but monthly billing is preferable. In order to ensure that smaller manufacturers providing other tobacco products are not disproportionately affected by system costs, the cost of UIDs must be the same for all methods of delivery.

We are aware that the cost to the UK Supplier may be significantly higher when providing physical delivery of UIDs. To date, no physical UIDs have been ordered in the UK system. Indicatively, we would expect this to remain to be the case until other tobacco products are introduced in 2024. After this point we do not expect the total amount of physical UIDs ordered to exceed 5% of the total UIDs ordered in the UK system.

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5.4 Mobilisation

The UK Supplier will ensure their solution is fully operational, according to the standards and requirements as stated within this specification and the contract, by 1 July 2022.

During the Mobilisation period, the UK Supplier will deliver, as a minimum, the following key activities:

- Delivery of a detailed mobilisation plan, building upon the draft mobilisation plan submitted at tender stage, within four weeks of the contract commencement date
- Delivery of SDD/HLSA
- Delivery of final technical specification
- System development sprints or cycles for all key deliverables
- Robust testing procedures prior to service 'go-live'
- Transfer of data between systems
- Training of HMRC staff to use graphical interface
- Delivery of all other activities required to fully operationalise the service according to the standards and requirements as stated within this specification and the contract, by 1 July 2022

Where the Supplier intends to build upon existing infrastructure to deliver all or part of the required UK system, the detail mobilisation plan must include the activity required to develop that existing infrastructure to meet the unique requirements of the UK system. The UK Supplier will also be required to proactively support the tobacco industry to prepare and be ready for the go-live of service by 1 July 2022. As a minimum, the UK Supplier will be responsible for the following:

- Engaging manufacturers and importers to ensure they understand the UK Supplier's solution and systems integration with their production sites.
- Providing technical specifications for solution providers of scanning equipment to ensure their software sends data to the UK router
- Minimising additional burdens on businesses in the tobacco supply chain
- Leading and developing, in collaboration with HMRC, a communication plan for tobacco manufacturers, importers and over 45,000 other UK economic operators that interact with the system, to clarify changes to the proposed system and any required actions by EOs ahead of 1st July 2022 at all key stages of delivery, in advance of, during and after implementation. The communication plan must set out the any required updates to scanning equipment software.
- Providing robust customer care to EOs to ensure the smooth operation of the system
 - Ensuring the efficient transfer of existing registration details when provided with registration data by the incumbent UK Supplier and enabling economic operators to register and obtain new economic operator and facility identifiers

5.5 Security - Physical/IT/Data

Potential UK Suppliers must read and comply with Articles 25 & 36 of CIR 2018/574

All electronic communication and data provided for under the requirements of the UK Supplier must be carried out using secure means. Applicable security protocols and connectivity rules must be based on non-proprietary open standards. All UK data protection, GDPR and applicable legislation must be adhered to.

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The UK Supplier must store data held under this contract within the UK wherever possible. Where it is not possible for the UK Supplier to store data held under this contract within the UK, the UK Supplier may propose storing data within the EEA. Any proposals to store data within the EEA may be subject to further HMRC security checks. HMRC's agreement to whether data can be stored outside of the UK shall be entirely at the Authority's discretion. The UK Supplier shall be responsible for the security and integrity of the data they collect and process including any Cloud-based servers used to host solutions.

The UK Supplier must securely transfer existing registration and traceability data upon appointment of a new UK Supplier.

The UK Supplier will complete the separate security questionnaire as part of their tender documentation, and this completed security questionnaire will then form the Security Plan within the contract. The UK Supplier will adhere to all security standards as contained within appendices A-G of the Security Plan Questionnaire.

5.6 Exit Provision

The UK Supplier shall provide and implement an exit management plan in accordance with the contract terms. A reasonable transition period would be a minimum of 8 months. The exit management plan must include plans for transfer of all economic operator registration details and existing traceability data held on the UK data repository to HMRC or its UK Supplier to ensure the continuance of the service in the event of a new supplier being appointed and must cover both standard exit and emergency exit in the event of early termination of the contract or failure of the UK Supplier's business.

5.7 Health and Safety

The UK Supplier must comply with all relevant Health and Safety legislation, including Health and Safety at Work Act 1974 throughout the Contract term.

The UK Supplier must provide all Risk Assessments to HMRC within 7 days of the commencement of the Contract. Any amendments to any Risk Assessment proposed by the UK Supplier should be submitted to HMRC for written approval, prior to implementation. This approval shall not be unreasonably withheld or delayed.

5.8 Social Value

The UK Supplier acknowledges that HMRC has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and agrees to cooperate with HMRC to provide social value opportunities through this contract.

The UK Supplier must provide social value benefits that will be delivered through the contract rather than by referring to wider corporate policies the UK Supplier implements as part of its standard business.

Any benefit identified as social value in tenders or contracts must be over and above the core deliverable/s of the contract. For example, if the contract was for the supply of employment support for the public, the core service (i.e. employment support) could not be defined as social value delivered through the contract.

The UK Supplier will provide management information in relation to the above requirement for their staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six months after the contract commencement date and annually thereafter.

The UK Supplier will deliver social value benefits against the policy outcomes and award criteria as detailed below:

- a) Policy outcome: Tackling Economic inequality - Creating new businesses, new jobs and new skills

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The government aims to help businesses create better, higher-paying jobs in every part of the United Kingdom. Developing the skill levels of the current and future workforce is the essential enabler for this. A nationwide focus on jobs and skills, especially in high growth sectors with known skills shortages, will help to narrow disparities between communities. Providing better jobs also helps employers to attract and retain the talent they need to grow and thrive. Government will monitor progress under this policy outcome by asking suppliers to report the number of full-time equivalent jobs, traineeships, T Level industry placements and other Level 2 and above training opportunities created through their contracts.

Award Criteria

Effective measures to deliver the following benefits through the contract:

- Create employment and training opportunities, particularly for those who face barriers to employment and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors.
- Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.

b) Policy Outcome: Effective stewardship of the environment

Government's 25 Year Environment Plan sets out goals for improving the environment within a generation and details how it will work with communities and businesses to do this. Activities in support of additional environmental improvements form the Model Award Criteria for this policy outcome in the model.

Award Criteria

Effective measures to deliver the following benefits through the contract:

- Deliver environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions.
- Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement

Please refer to the Government Commercial Functions 'The Social Value Model' for further information on the Policy Outcomes and Award Criteria: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940826/Social-Value-Model-Edn-1.1-3-Dec-20.pdf

6. System Performance

This section sets out the performance metrics that the UK Supplier must ensure the UK tobacco Track and Trace system is fully compliant with.

6.1 Customer Service

The UK Supplier will provide a dedicated customer service team to operate as the first point-of-contact for operational queries raised by economic operators.

The UK Supplier must:

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- Provide a customer contact service to economic operators which offers ad-hoc out-of-hours or emergency support if required
- Implement a robust process to ensure that issues raised by economic operators are satisfactorily resolved within a reasonable timeframe, without needing to resort to escalation via HMRC whenever possible
- Provide 24-7 incident reporting and management for economic operators, including tiered escalation and detailed incident reporting
- Comply with the agreed Incident Management processes as detailed within the Contract
- Proactively engage with EOs responsible for message submission errors, helping to ensure validity of traceability data captured within the system
- Negotiate any planned system outages or downtime in advance with HMRC, communicating any such periods directly with EOs.

6.2 Contract Management and Management Information

The UK Supplier will provide regular contract management support to HMRC throughout the lifetime of the contract to deliver in full the governance requirements as set out within Schedule 8.1 of the contract.

The UK Supplier will report to HMRC on an annual basis its performance against the key performance indicators listed within Annex 3 of this specification. HMRC reserves the right to amend the key performance indicators during the life of the contract in accordance with the contract terms.

In addition, the UK Supplier will provide HMRC with monthly Management Information including but not limited to:

- number of UIDs issued, activated and deactivated
- volume of messages transmitted by type
- volume of validation errors
- validation message response times
- number of economic operators, facility and machine IDs issued by territory
- volume of calls received and average speed to answer
- volume of complaints received, and percentage of complaints responded to within 3 working days,

The formatting of the Management Information (which will include the information listed above as a minimum) will be proposed by the UK Supplier and approved by HMRC during the mobilisation period.

The supplier shall provide an account manager, as well as a suitably qualified deputy to act in their absence, who will proactively manage the account and overall relationship with the contracting authority and participating organisations.

Any proposed change of account manager must be discussed and agreed by the Authority no less than one (1) month in advance of the planned change. The supplier will provide a replacement with relevant experience in managing an account of the size and profile of this contract.

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The account manager, or their deputy during periods of absence, will be contactable by HMRC during the working hours of 08:30-17:30 Monday to Friday (excluding bank holidays).

Schedule 8.1 within the contract also refers to the regularity of meetings required.

Within three days of an incident being escalated to HMRC, either by the account manager or by an economic operator, the UK Supplier will provide HMRC with full and detailed reports of the escalated issue. As a minimum, the reports will include the following:

- the date at which the issue was first raised with the UK Supplier
- the background of the issue
- the scale of the issue
- relevant communications on the issue
- actions already taken to address the incident, and;
- recommended mitigations

The UK supplier must have plans in place in the event of any unplanned system outages or downtime. This plan should include communication activity with affected EOs.

6.3 Desirable Features

The following are desirable features which do not form part of the minimum requirements for the procurement exercise.

- EOID/FID checker function - minimum of a simple Yes/No functionality which enables registered EOs to check the validity of EOIDs and FIDs (further details will be provided in the final version of this document and full specifications will be agreed with the successful UK Supplier)
- Innovative reporting tools which proactively provide error and exception reports, automatic alerting based on exceptions and reporting of suspicious or unusual behaviour

6.4 Audit

The UK Supplier will enable HMRC to attend, access, review, inspect and assure, with or without prior notice, all sites, processes, data and records relating to the delivery of the Contract. The UK Supplier will provide fee-free, read-only access to un-audited accounts relating to the Contract upon the reasonable request of HMRC.

6.5 Risk management and business continuity

The UK Supplier will create and maintain a Contract Risk Register for the term of the Contract. The Risk Register shall be created and agreed with HMRC within 30 days of the Contract commencement date.

Where possible, downtime to any component of the repository system, as a result of maintenance should be outside office hours and agreed at least 5 working days in advance with HMRC.

The UK Supplier will create a Business Continuity Plan (BCP) and Disaster Recovery Plan (DRP) for review and approval within 15 days of the Contract commencement date. Any amendments to the BCP and DRP, shall be submitted in writing to HMRC. HMRC shall approve, in writing, each amendment prior to the amendment being included in the BCP and DRP.

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BCP and DRP must include any coordination activities which may arise as a result of Covid-19 restrictions.

7. Appendices and attachments

APPENDIX 1: Import/Export scenarios - scanning requirements

Manufacturer Location	Intended Market	UID Provider	Code on Printed the Pack	Manufacturer and/or Importer events sent to
UK (GB)	UK (GB)	UK	UK	UK repository (all events)
UK (GB)	UK (NI)	UK	UK (XI)	UK repository (all events). EU repository (events specified in the EU-TPD Regulation).
UK (GB)	EU	EU	EU	UK repository (all events up to exportation point, including pairing event if required). EU repository (events specified in the EU-TPD Regulation).
UK (GB)	Rest of world (RoW)	UK	UK	UK repository (all events up to exportation point, including pairing event if required). RoW country repository if there is a track and trace system in place..
EU	UK (GB)	EU & UK	EU	UK repositories (all events including pairing event except movement of goods outside the UK). EU repository (events specified in the EU-TPD Regulation).
EU	UK (NI)	EU & UK	EU (XI)	UK repositories (all events except movement of goods outside the UK). EU repository (events specified in the EU-TPD Regulation).
Rest of world	UK (GB)	UK	UK	UK repositories (all events including pairing event except movement of goods outside the UK). RoW country repository if there is a track and trace system in place.
Rest of world	UK (NI)	EU & UK	UK (XI)	UK repositories (all events including pairing event except movement of goods outside the UK).

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				<p>EU repository (events specified in the EU-TPD Regulation).</p> <p>RoW country repository if there is a track and trace system in place.</p>
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APPENDIX 2: Structure of a UID**Structure of a unit-level unique identifier**

(after encoding into a data carrier)

compliant with Implementing Regulation 2018/574 and the applicable international standards

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Unique identifier:	Symbology Identifier	Mandatory Data Qualifier	ID Issuer Identification Code	Optional Data Qualifier	Serial Number	Optional Data Qualifier	Product code	Optional Data Qualifier	Timestamp
Type:	Qualifier	Qualifier	String (data element)	Qualifier	String (data element)	Qualifier	String (data element)	Qualifier	String (data element)
Position within the unique identifier:	Fixed	Fixed	Fixed	Free	Free	Free	Free	Fixed	Fixed
Regulated by:	Art. 21(1) and ID issuer's coding structure	Art.3(4), Art.8(1)(a), Art. 21(1) and ID issuer's coding structure	Art.3(4) and Art.8(1)(a)	Art. 21(1) and ID issuer's coding structure	Art.8(1)(b)	Art. 21(1) and ID issuer's coding structure	Art.8(1)(c)	Art. 21(1), Art. 21(4) and ID issuer's coding structure	Art.8(1)(d) and Art.21(4)
Applicable international standards:	ISO/IEC 16022:2006, or ISO/IEC 18004:2015, or ISS DotCode Symbology Spec.	ISO 15459-2:2015 and ISO 15459-3:2014	ISO 15459-2:2015 and ISO 15459-3:2014						
Process	Applied by EO	Applied by EO	Generated by ID issuer	Applied by EO	Generated by ID issuer	Applied by EO	Generated by ID issuer	Applied by EO	Applied by EO
Transmission to the repositories system	No	No	Yes	No	Yes	No	Yes	No	Yes

Note: For the purpose of the above schema, group separators (/FNC1) are considered in the same manner as optional data qualifiers, i.e. their use depends on ID issuer's coding structure.

APPENDIX 3: KPIs for the UK Track and Trace service

The KPIs are as included within Annex 1: KPIs of Schedule 2.2: Performance Levels.

SCHEDULE 2.2

PERFORMANCE LEVELS

DEFINITIONS

In this Schedule, the following definitions apply:

"Critical Failure"	KPI	Where: <ul style="list-style-type: none">(a) the Supplier fails to provide any part of the Services to a level which meets or exceeds the Critical KPI Failure Performance Threshold for the relevant KPI; and/or(b) there is a Repeat Failure Count of four (4) or more for the relevant KPI.
"Critical Failure Performance Threshold"	KPI	the relevant level of performance designated as such for a KPI and set out in the relevant table in Annex 1;
"KPI"		the key performance indicators set out in Table 1 of Part I of Annex 1;
"KPI Failure"		the Supplier fails to provide any part of the Services in accordance with and so as to at least meet the relevant Target Performance Levels;
"Measurement Period"		in relation to a KPI, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually), as is specified for each KPI in the table set out at Annex 1;
"Service Period"		in relation to a KPI, the period over which the Supplier's performance is measured, which shall be a calendar month, save that: <ul style="list-style-type: none">(a) the first service period shall begin on the Commencement Date and shall expire at the end of the calendar month in which the 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;
"Target Performance Level"		the minimum level of performance for a KPI which is required by the Authority, as set out in the table in Annex 1;
"Unacceptable"		the Supplier committing a KPI Failure in respect of 75% or more

KPI Failure” of the KPIs that are measured in a Service Period.

PART A: KPI'S AND SERVICE CREDITS

1 SERVICE LEVEL FAILURE

- 1.2 The Supplier shall at all times provide the Services to meet or exceed the Target Performance Level for each KPI.
- 1.3 The Target Performance Level is the minimum standard of performance which is required by the Authority.
- 1.4 If in any Service Period, a KPI Failure occurs:
 - (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) without prejudice to the Authority's other rights and remedies, the Authority shall be entitled to terminate the Agreement under Clause 33.1(b) (Termination by the Authority) if the KPI Failure is an Unacceptable KPI Failure or Critical KPI Failure.
- 1.5 Each KPI which relates to a Service shall apply and be measured from the relevant Operational Service Date of the relevant Service(s) to which that KPI relates (unless otherwise stated in Annex 1).
- 1.6 If the Supplier fails to measure or report on a KPI in accordance with Part B of this Schedule, the Supplier shall be deemed to have failed to meet the Target Performance Level for the relevant KPI in the relevant Measurement Period, unless the Authority otherwise agrees in writing.
- 1.7 Each Target Performance Level and/or Critical KPI Failure Performance Threshold may only be changed as a result of the application of:
 - (a) the Change Control Procedure;
 - (b) the continuous improvement requirements set out in Schedule 7.3 (*Value for Money*) of this Agreement which will be addressed through the Change Control Procedure; or
 - (c) the agreed results of a benchmarking exercise which is carried out pursuant to the provisions of Schedule 7.3 (*Value for Money*) which will be addressed through the Change Control Procedure.

2 REPEAT KPI FAILURES

- 1.8 If a KPI Failure occurs in respect of the same KPI in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".

- 1.9 In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat KPI Failures for each KPI (the “**Repeat Failure Count**”). For example, if a KPI Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).
- 1.10 When, in a Measurement Period, a KPI with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).
- 3 Not used
- 4 Not used

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 report to the Authority Representative which summarises the performance by the Supplier against each of the applicable Target Performance Levels as more particularly described in Paragraph 1.2 of this Part B (the “**Performance Monitoring Report**”).
- 1.2 The Performance Monitoring Report shall be in such format as requested by the Authority from time to time, but shall contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each KPI the actual performance achieved over the Service Period and the relevant Measurement Period which has just ended, and that achieved over the previous three (3) relevant Measurement Periods;
- (b) a summary of all KPI Failures that occurred during or which have occurred by the end of the Service Period;
- (c) the Severity Level of each KPI Failure which occurred during the Service Period or by the end of it;
- (d) which KPI Failures remain outstanding and progress in resolving them;
- (e) for any Critical KPI Failures occurring during or by the end of the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
- (g) whether or not a Rectification Plan has been agreed; and
- (h) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

- (i) for any Repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (j) not used;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (l) such other details as the Authority may reasonably require from time to time;

Information in respect of previous Service Periods

- (m) a rolling total of the number of KPI Failures that have occurred over or by the end of the past six Service Periods, including any Repeat Failure Counts; and
- (n) not used.

Performance Disputes

- 1.3 The Performance Monitoring Report shall be reviewed by the Authority including at the next Performance Review Meeting held in accordance with Paragraph 1.4. The Supplier acknowledges and agrees that the Authority may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular KPI. In the event of any dispute or difference between the Supplier's assessment and the Authority's assessment in respect of a KPI the Authority's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Supplier shall be entitled to subsequently escalate any such dispute or difference in accordance with the Dispute Resolution Procedure.
- 1.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. These meetings ("**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.
- 1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.
- 1.6 In addition to the requirements above and elsewhere in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably request from time to time in order to verify the level of the performance of the Supplier.

2 PERFORMANCE VERIFICATION

The Authority reserves the right to verify any aspect of the Services and the Supplier's performance under this Agreement against the Target Performance Levels, including by sending test transactions through the IT Environment or otherwise.

ANNEX 1: KPI'S

PART I: KPI'S TABLE

The KPIs that shall apply to the Services are set out below:

Table 1 - KPIs

<u>KPIs</u>	<u>Target Performance</u>	<u>Critical KPI Failure Performance Threshold</u>	<u>Measurement Period</u>
Electronic UID to be delivered within 2 Working Days (+)	100%	90%	Monthly 24/7
Physical UID to be delivered in a correctly printed form within 10 Working Days (+)	100%	90%	Monthly 24/7
Electronic Aggregated UID to be delivered within 2 Working Days (+)	100%	90%	Monthly 24/7
ID Code (Economic, facility, machine) to be issued within 2 Working Days (+)	100%	90%	Monthly 24/7
Overall response time of the repository system in sending acknowledgment messages, not considering the speed of the internet connection of the end user, which shall be no more than 1 second	99%	90%	Monthly 24/7
The overall time between the arrival of reporting activity data and its accessibility, via the graphical and non- graphical reporting interfaces, in the repository shall be no more than 60 seconds in at least 99% of all data transfer activities.	99%	90%	Monthly 24/7
Calls at contact centre to be answered within 10 minutes by the appropriate person to record or resolve enquiry	95%	75%	Monthly (*)
Complaints response (to acknowledge the complaint): percentage of Complaints responded to by Supplier within 5 Working Days for the Service over a monthly period.	90%	75%	Monthly (*)
Website uptime of 99.5% Number of seconds that the website is uptime minus the number of seconds that the website is down in the calendar month.	99.5%	95%	Monthly 24/7

Downtime as a result of planned maintenance agreed in writing in advance with the Authority will not be counted as non-Availability.			
Graphical interface uptime of 99.5% Number of seconds that the interface is uptime minus the number of seconds that the interface is down in the calendar month. Downtime as a result of planned maintenance agreed in writing in advance with the Authority will not be counted as non-Availability.	99.5%	95%	Monthly 24/7
All transactions scanned and transmitted by economic operators to be available to view in the graphical interface	100%	99%	Monthly 24/7
Fee charged for electronic UIDs to be within agreed parameters	100%	100%	Monthly
Fee charged for physical UIDs to be within agreed parameters	100%	100%	Monthly
Fee charged for aggregated UIDs to be within agreed parameters	100%	100%	Monthly

(*) within Working Hours. Working Hours defined as Monday - Friday 09:00-17:00 GMT excluding UK Bank Holidays.

(+) Cancelled orders are to be excluded.

1. GENERAL

1.1. In calculating the KPIs the following shall be disregarded:

- any failure by the Authority or the Economic Operators to make information accessible to the Supplier
- non-availability during planned maintenance
- failure of non-availability of any prerequisite identified as a HMRC responsibility, chiefly but not limited to availability of the Router (Secondary Repository)
- any Force Majeure Event.

1.2. Any amendments to the KPIs required will be agreed between the two parties and formalised through the change control process.

PART II: KPI Specific Definitions

N/a.

SCHEDULE 2.3

STANDARDS

1. QUALITY PLANS

1.1 The Supplier shall:

- (a) no later than twenty (20) Working Days after the Effective Date, submit to the Authority for approval a quality plan for the Mobilisation activities specified in the Mobilisation Plan;
- (b) within forty (40) Working Days of the Effective Date, submit to the Authority for approval a quality plan for the Services (*Services Description*),

the purpose of which are to ensure that all aspects of the Mobilisation and Services are the subject of quality management systems and are consistent with the Quality Standards ("**Quality Plans**").

1.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them. If the Authority does not approve a Quality Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within ten (10) Working Days revise the Quality 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 unreasonably withhold or delay its approval of the Quality Plan.

1.3 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.

1.4 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
- (c) any changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

SCHEDULE 2.4

SECURITY MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Breach of Security”

the occurrence of:

- (a) any unauthorised access to or use of the Services, , the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information, the Authority Data and the End-Customer Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement; and/or
- (c) a failure to comply with the personnel security requirements, as set out in the Security Management Plan,

in each case as may be more particularly set out in the security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements; the UK Government's national technical authority for information assurance; the CESG Commercial Product Assurance scheme;

“CESG”

“CPA”

“Off-Shore Personnel”

“Off-Shore Personnel Security Checks”

insert details of any personnel

insert details of any checks

“Security Policy Framework”

the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier;

2 SECURITY REQUIREMENTS

- 2.1 The provisions of this Schedule 2.4 shall, in addition to the obligations below, apply in respect of the Supplier's handling and storage of End-Customer Data and references to 'Authority Data' shall be deemed to include references to 'End-Customer Data'.
- 2.2 The Supplier shall comply with the Baseline Security Requirements and the Security Management Plan and the Supplier shall ensure that its Security Management Plan fully complies with the Baseline Security Requirements and the Security Policy Framework.
- 2.3 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 2.4 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 End-Customers of 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 Fees shall then be agreed in accordance with the Change Control Procedure.
- 2.5 Until and/or unless a change to the Fees is agreed by the Authority pursuant to the Change Control Procedure the Supplier shall continue to perform the Services in accordance with its existing obligations.

3 PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- (a) is in accordance with the Law and this Agreement;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and
 - (d) complies with the Baseline Security Requirements and the Authority's specific security requirements as described in the Services Description as appropriate.
- 3.3 In the event of any inconsistency in the provisions of the standards, guidance and requirements listed in Paragraph 3.2 above, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

3 MALICIOUS SOFTWARE

- 3.1 The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Authority, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of anti-virus software being used in certain circumstances, e.g. in response to a specific threat.
- 3.2 Notwithstanding Paragraph 3.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 3.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 3.2 shall be borne by the Parties as follows:
- (a) by the Supplier where the Malicious Software originates from the Software (except where the Authority has waived the obligation set out in Paragraph 3.1) 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) otherwise by the Authority.

4 SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
- 4.2 The Security Management Plan shall:
- (a) be based on the Supplier's final response to the Authority's Security Questionnaire, a copy of which is set out in Annex 2;
 - (b) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
 - (c) detail the process for vetting staff at the appropriate security level with reference to the level of access staff will have to Authority Data, managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

- (d) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
 - (f) set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;
 - (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
- 4.3 If the Security Management Plan submitted to the Authority Representative pursuant to Paragraph 4.1 is approved by the Authority Representative, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority Representative, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority Representative for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority Representative. If the Authority Representative does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority Representative pursuant to this Paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
- 5 AMENDMENT AND REVISION OF THE SECURITY MANAGEMENT PLAN**
- 5.1 The Security Management Plan shall be fully reviewed and updated by the Supplier within ten (10) Working Days of any Breach of Security and further at least annually to reflect:
- (a) emerging changes in Good Industry Practice;

- (b) any change or proposed change to the Services and/or associated processes;
 - (c) any new perceived or changed security threats; and
 - (d) any reasonable change in requirements requested by the Authority.
- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the Security Management Plan;
 - (b) updates to the risk assessments;
 - (c) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment.

6 BREACH OF SECURITY

- 6.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or attempted Breach of Security.
- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 6.1, the Supplier shall:
- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
 - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (iii) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

- (iv) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government (“GovCertUK”) on the Authority’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise);
 - (b) as soon as reasonably practicable 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; and
 - (c) maintain auditable records of such Breach of Security in accordance with Schedule 8.2 (Reports and Records).
- 6.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Authority.

ANNEX 1: BASELINE SECURITY REQUIREMENTS

1 Higher Classifications

- 1.1 The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

2 End User Devices

- 2.1 When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the CESG to at least Foundation Grade, for example, under CPA.
- 2.2 Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance-2>). As a minimum, the security standards must include Assurance Framework, Ten Critical Steps and Requirements. Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. The Authority's agreement to any such change shall be entirely at the Authority's discretion and, in so far as the change in location entails the transfer of Personal Data to a location outside the UK, shall only be given if a Change Request is expressly permitted by Paragraph 1.8 of Schedule 2.8 (*Data Processing and List of Sub-processors*).
- 3.3 The Supplier shall:
- (a) provide the Authority with all Authority Data on demand in an agreed open format;
 - (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;

- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

4 Networking

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5 Security Architectures

- 5.1 The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

6 Personnel Security

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work (including nationality and immigration status).
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.
- 6.6 Notwithstanding the Supplier's obligation to ensure that the Security Management Plan is implemented and followed, the Supplier shall ensure that the Supplier Personnel are promptly informed of action taken in relation to any failure to do so.
- 6.7 The Supplier shall ensure that Supplier Personnel complete the security questionnaire as provided by the Authority from time to time.
- 6.8 The Supplier shall perform the Off-Shore Personnel Security Checks in relation to any proposed Off-Shore Personnel prior to their engagement to the reasonable satisfaction of the Authority in the delivery of the Services under this Agreement.

7 Identity, Authentication and Access Control

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

8 Audit and Monitoring

- 8.1 The Supplier shall collect audit records which relate to security events in the systems 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:
 - (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - (b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with Paragraph 8.1 for a period of at least six (6) months.

ANNEX 2: SECURITY MANAGEMENT PLAN

Information redacted in line with FOI Act Section 43(2).

SCHEDULE 2.5

INSURANCE REQUIREMENTS

1 OBLIGATION TO MAINTAIN INSURANCES

1.1 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, for example UK employers' liability insurance and/or motor third party liability insurance, as may be required by applicable Law (together the “Insurances”).

1.2 The Insurances shall be:

- (a) maintained in accordance with Good Industry Practice;
- (b) (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;
- (c) taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
- (d) maintained for at least six (6) years after the end of the Term.

1.3 The Supplier shall ensure that the public and products liability policy that it has or puts in place 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 Services 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 fifteen (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.

5 AGGREGATE LIMIT OF INDEMNITY

5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Agreement and if any claims are made which do not relate to this Agreement then the Supplier shall notify the Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

6 CANCELLATION, SUSPENSION, TERMINATION OR NON-RENEWAL

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7 INSURANCE CLAIMS

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the 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.

7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 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.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier 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: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 Interest

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:

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

loss of or damage to property;

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

3 Limit of indemnity

Not less than **£1,000,000 (one million pounds)** in respect of any one occurrence, the number of occurrences being unlimited, but **£3,000,000 (three million pounds)** in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

UK

5 Period of insurance

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

Indemnity to principals clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed **£20,000** for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

9 Insured

The Supplier

10 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 13) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

11 Limit of indemnity

Not less than *£1,000,000 (one million pounds)* in respect of any one claim, the number of claims being unlimited, *but £3,000,000 (three million pounds)* in the aggregate per annum, exclusive of defence costs which are payable in addition.

12 Territorial Limits

UK

13 Period of insurance

From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of six (6) years thereafter.

14 Cover features and extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

15 Principal exclusions

15.1 War and related perils

15.2 Nuclear and radioactive risks

16 Maximum deductible threshold

Not to exceed *£20,000* for each and every claim.

SCHEDULE 2.6

NOT USED

SCHEDULE 2.7

NOT USED

SCHEDULE 2.8

PROTECTION OF PERSONAL DATA

Processing Personal Data

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.

- 1.1 The contact details of the Authority's Data Protection Officer are:
Name: Nicholas de Lacy-Brown.
Phone no.: 03000 520108
Email: nicholas.delacy-brown@hmrc.gsi.gov.uk
- 1.2 The contact details of the Supplier's Data Protection Officer are:
Name: Garreth Cameron
Email: dpo@dentsu.com
Address: Dentsu International, Regent's Place, 10 Triton Street, London, NW1 3BF
- 1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 23.3 to 23.16 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the Personal Data.</p> <p>This is a concession contract to deliver the UK tobacco track and trace system under the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products. Users (All businesses who manufacture, transport store or sell cigarettes and/or hand rolling tobacco products to be sold in the UK) are required to register within this system. Manufacturers and importers are additionally required to purchase Unique ID codes (UIDs) from the supplier of the system. UIDs are applied to products and are scanned throughout the supply chain. Traceability data which is captured from this scanning of UIDs is captured within the data repository which is part of the UK track and trace system</p>

Duration of the processing	01 July 2022 - 30 October 2026
Nature and purposes of the processing	The supplier is responsible for maintaining a registry of businesses, facilities and machines within the UK system and a similar but separate registry in the EU system in respect of Northern Ireland. Data is only accessible by the legally nominated Authorities (HMRC for the UK system and the EU commission for the EU system) and data may only be used for the enforcement purposes laid out in the same legislation
Type of Personal Data	When registering, users should register with their business information. Especially for sole traders, it is possible that users may use the following personal information: <ul style="list-style-type: none"> • Name and address of user, business or facility • Email address used for registration • Telephone number • Tax identifiers and/or VAT/excise numbers Name of anyone acting on behalf of the business
Categories of Data Subject	Business owners or operators who are required to register within the UK track and trace system
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	The supplier must return or destroy data as instructed by the authority when the contract expires. This may include the requirement for Supplier to transfer both registry and traceability data to any new supplier.

Annex: 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 Annex 1 (Joint Controller Agreement) in replacement of Clause 23.3-23.16 (Where one Party is Controller and the other Party is Processor) and 23.18-23.27 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/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 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Authority each undertake that they shall:

- (a) report to the other Party every [x] months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

(v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Agreement during that period;

(b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and

(c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.

(d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this 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 Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information

(ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

(iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

(h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

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

(iii) state of technological development; and

(iv) cost of implementing any measures.

(i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

(i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this 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 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

(i) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

(ii) all reasonable assistance, including:

- (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
- (b) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
- (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (i) the nature of the Personal Data Breach;
- (ii) the nature of Personal Data affected;
- (iii) the categories and number of Data Subjects concerned;
- (iv) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (v) measures taken or proposed to be taken to address the Personal Data Breach; and
- (vi) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the 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 Annex 1 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 4.1 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

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 Note: This paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

9.1 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 Contractor'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*).

9.2 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.

9.3 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.

9.4 Nothing in Paragraphs 9.2-9.3 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.

10. Termination

If the Supplier is in material Default under any of its obligations under this Annex 1 (*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*).

11. Sub-Processing

11.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

- (i) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (ii) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

12. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this

Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

1 INTRODUCTION

The responsibilities of the Authority specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

The Authority shall:

- (a) 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;
- (b) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Mobilisation Plan;
- (c) 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
- (d) procure for the Supplier such agreed access and use of the Authority's relevant IT systems (if any) 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).

SCHEDULE 4.1

SUPPLIER SOLUTION

1. GENERAL PRINCIPLES

- 1.1. The Supplier will deliver the service as described within their responses to the selection and award questionnaire and in their responses to clarification questions.
- 1.2. The Supplier's responses to the award questionnaire are appended to this Schedule within Annex 1: Award Questionnaire Responses.
- 1.3. The Supplier's responses to the clarification questions are appended to this Schedule within Annex 2: Clarification Question Responses.

ANNEX 1: AWARD QUESTIONNAIRE RESPONSES

Information redacted in line with FOI Act Section 43(2).

ANNEX 2: CLARIFICATION QUESTION RESPONSES

Information redacted in line with FOI Act Section 43(2).

SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

1 GENERAL

1.1 Commercially sensitive information will be defined as all data, documents, work products and other form of information relating to:

- a) Cost model submitted as part of the tendering process
- b) Financial data of Dentsu and that of its customers, including customer data submitted as part of the tendering process
- c) Solution architecture, notably for all parts of ID issuer, data repository and router
- d) Front end architecture
- e) Operational tools architecture
- f) Design of ID issuer, data repository and router
- g) Operational tools design
- h) Source code of ID issuer, data repository, router, front end and operational tools
- i) Technological stack
- j) Operational procedures and guidelines in so far that not made available to stakeholders
- k) Deployment automation procedures
- l) Infrastructure automation procedures
- m) Monitoring configurations and set-up
- n) Security Plan and Procedures
- o) Validation Plan and Test Protocols
- p) Encryption algorithms
- q) Data analytics algorithms
- r) Network diagrams
- s) Logs and audit trail stored in the traceability system
- t) Credentials stored in the traceability system
- u) Operational and audit reports

SCHEDULE 4.3

NOTIFIED AND KEY SUB-CONTRACTORS

2 APPOINTMENT OF SUB-CONTRACTORS

- 2.1 The Supplier is entitled to enter into Sub contracts with the Subcontractors set out in Annex 1.
- 2.2 Where the Supplier wishes to enter into a Sub-contract or replace a 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 Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services 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; and/or
 - (c) the proposed Sub-contractor employs unfit persons; and/or
 - (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.2 (*Exclusion of Sub-Contractors*).
- 2.3 In making a request pursuant to Paragraph 2.2, the Supplier shall provide the Authority with the following information about the proposed Sub-contractor:
- (a) its name, registered office and company registration number;
 - (b) a copy of the proposed Sub-contract;
 - (c) the purposes for which the proposed Sub-contractor will be employed, including the scope/description of any services to be provided by the proposed Sub-contractor;
 - (d) if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant service levels;
 - (e) 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 "arms-length" terms;
 - (f) the Sub-contract price expressed as a percentage of the total projected Charges over the Term;
 - (g) (where applicable) the Credit Rating Threshold of the Subcontractor; and
 - (h) any further information reasonably requested by the Authority;.
- 2.4 The Supplier shall record details of all Sub-contractors that it appoints from time to time in Annex 1 (Notified Sub-contractors and Key-subcontractors), including whether or not the Sub-contract is a Third Party Contract and shall promptly provide the Authority with an updated copy.

- 2.5 The Supplier shall notify the Authority if and to the extent to which any Sub-contractor has or intends to sub-contract to a third party any of the services it provides to the Supplier under the terms of the Sub-contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub-contractor provides to the Authority, a copy of the contract between the Key Sub-contractor and the third party.

3 SUB-CONTRACTS

- 3.1 The Supplier shall ensure that each 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 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 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 Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*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(k) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Sub-contract, including the maintenance of Open Book Data;
 - (v) the conduct of Audits set out in Clause 12.1 to Clause 12.12 (Records, Reports and Audits);
 - (vi) the reporting requirement set out in Paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
 - (vii) the tax compliance requirements set out in Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*);
 - (viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
 - (ix) the disclosure of Confidential Information set out in Clause 21.3

(Confidentiality); and

- (x) the slavery and human trafficking compliance requirements set out in Clause 35.5 (Modern Slavery Act).
 - (k) provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement; and
 - (l) 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 30 (*Step-in Rights*).
- 3.2 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:
- (a) a copy of any Sub-contract; and
 - (b) any further information relating to that Sub-contract as reasonably requested by the Authority.

4 KEY SUB-CONTRACTS

- 4.1 Without prejudice and in addition to the provision in Paragraph 3.1 to 3.2, the Supplier shall ensure that each Key Sub-contract shall include a provision requiring all Key Sub-contractors to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) 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 ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
 - (b) 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;
 - (c) 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 Service Continuity Plan.

5 SUPPLY CHAIN PROTECTION

- 5.1 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) 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;
 - (b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;
 - (c) 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;
 - (d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
 - (e) granting the Supplier a right to terminate the Sub-contract if the relevant Sub-contractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;
 - (f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 1.1(b)(vii) of Schedule 8.2 (Reports and Records); and
 - (g) requiring the Sub-contractor to include a clause to the same effect as this Paragraph 5.1 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.
- 5.2 The Supplier shall, and shall ensure that its Sub-Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-Contractors for the purposes of monitoring and/or better understanding of the Services.

6 AMENDMENT OF SUB-CONTRACTS

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

7 RETENTION OF LEGAL OBLIGATIONS

- 7.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Schedule 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.

- 7.2 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 Contract, 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.

7 IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN

- 7.1 The following definitions shall apply in this Paragraph 7.1:

“**Contracts Finder**” means the Government’s publishing portal for public sector procurement opportunities;

“**SME**” means 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; and

“**VCSE**” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

- 7.2 If the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000, the Supplier shall:

- (a) subject to Paragraph 7.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
- (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Paragraph 7.2(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.

- 7.3 Each advert referred to at Paragraph 7.2 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

- 7.4 The obligation at Paragraph 7.2 shall only apply in respect of subcontract opportunities arising after the contract award date.

- 7.5 Notwithstanding Paragraph 7.1 to Paragraph 7.4 above, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

8 MANAGEMENT CHARGES AND INFORMATION

- 8.1 This Paragraph 8 applies if the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000.
- 8.2 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) reports to the Authority at the Authority's request which incorporate the data described in the MI Reporting Template, as defined below, ("**SME Management Information Reports**") which is:
- (a) the total contract revenue received directly on a specific contract;
 - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 8.3 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template (as defined below) and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in Annex 2 to this Schedule and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version ("**MI Reporting Template**"). The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 8.4 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

ANNEX 1: NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS

1 NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS

- 1.1 In accordance with this Schedule, the Supplier is entitled to sub-contract its obligations under this Agreement to the Sub-Contractors and Key Sub-contractors listed in the table below.
- 1.2 The Parties agree that they will update this Schedule periodically to record any Sub-Contractors and 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.

Notified Key Sub-Contractors

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	Third Party Contract?
					[Level 1]	

Notified Sub-Contractors

Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold	Third Party Contract?
					[Level 1]	

ANNEX 2: MI REPORTING TEMPLATE



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SCHEDULE 4.4

NOT USED

SCHEDULE 4.5

NOT USED

SCHEDULE 5

NOT USED

SCHEDULE 6.1

MOBILISATION

DEFINITIONS

In this Schedule, the following definitions shall apply:

- "Detailed Mobilisation Plan"** means the plan prepared in accordance with paragraph 2.2 of this Schedule 6.1 (*Mobilisation*);
- "Mobilisation Commencement Date"** means 01 November 2021;
- "Mobilisation Plan"** the Outline Mobilisation Plan and the Detailed Mobilisation Plan as described in this Schedule;
- "Outline Mobilisation Plan"** means the plan in the form set out at Annex 1 of this Schedule 6.1 (*Mobilisation*), which contains a summary of the mobilisation Milestones, Deliverables and due dates.

1 GENERAL

- 1.1 The Supplier shall plan, prepare for and carry out the Mobilisation Activities in accordance with this Schedule, and shall:
- (a) comply with the Detailed Mobilisation Plan; and
 - (b) be responsible for overall management of the activities under the Detailed Mobilisation Plan in order to ensure the timely completion of each task and Milestone.

2 APPROVAL OF THE DETAILED MOBILISATION PLAN

- 2.1 The Supplier shall submit a draft of the Detailed Mobilisation Plan to the Authority for approval within 20 Working Days of the Effective Date. The Supplier shall ensure that the Detailed Mobilisation Plan is developed in accordance with the requirements set out in the Outline Mobilisation Plan.
- 2.2 The Supplier shall ensure that the draft Detailed Mobilisation Plan:
- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Mobilisation Plan;
 - (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of any Deliverable;

- (ii) the completion of any testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
 - (iii) the completion of any deployment or transition activity;
 - (c) clearly details all the steps required to implement the Milestones to be achieved up to and including the final Milestone, in conformity with the Authority Requirements;
 - (d) incorporates as a minimum the set of components required to implement the activities of the Mobilisation Plan as set out in Annex 2 (Minimum Set of Mobilisation Components);
 - (e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements;
 - (f) clearly details all the Supplier's dependencies on the Authority in order to complete the activities under the Detailed Mobilisation Plan; and
 - (g) includes all the Supplier's assumptions in setting out the activities and timescales in the Detailed Mobilisation Plan.
- 2.3 Prior to the submission of the draft Detailed Mobilisation Plan to the Authority in accordance with Paragraph 2.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Mobilisation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Mobilisation Plan.
- 2.4 Following receipt of the draft Detailed Mobilisation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Mobilisation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Mobilisation Plan no later than [20 Working Days] after the date on which the draft Detailed Mobilisation Plan is first delivered to the Authority.
- 2.5 If the Authority rejects the draft Detailed Mobilisation 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 Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Mobilisation 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 2.4 and this Paragraph 2.5 shall apply again to any resubmitted draft Detailed Mobilisation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 2.6 If the Authority approves the draft Detailed Mobilisation Plan, it shall replace the Outline Mobilisation Plan as the Mobilisation Plan from the date of the Authority's notice of approval.
- 2.7 Following the approval of the Detailed Mobilisation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Mobilisation Plan to the Authority every month until the Operational Service Commencement Date; and
 - (b) the Authority shall be entitled to request a revised Detailed Mobilisation Plan at any time by giving written notice to the Supplier. The Supplier shall, within [20] Working Days of receiving such a request, submit a draft revised Detailed Mobilisation Plan to the Authority for approval in accordance with the procedure set out in Paragraph 2.1 to 2.6.
- 2.8 Changes to any Milestones, Milestone Payments or Delay Payments shall only be made in accordance with the Change Control Procedure.
- 2.9 Any proposed amendments to the Detailed Mobilisation Plan shall not come into force until they have been approved in writing by the Authority.

3 TRANSITION FROM INCUMBENT SUPPLIER OR THE AUTHORITY

- 3.1 The Supplier shall provide to the Authority any reasonable assistance requested by the Authority to allow any services provided by the Incumbent Supplier or the Authority (as applicable) to continue without interruption during transition and to facilitate the orderly transfer of responsibility for and conduct of those services from the Incumbent Supplier or the Authority (as applicable) to the Supplier without any adverse impact on current service levels and service delivery provided to the Authority.

4 CHARGES

- 4.1 In accordance with clause 10.2 of the Agreement, no charges are payable in respect of Mobilisation.

5 REPORTING AND RISKS

- 5.1 The Supplier shall provide to the Authority progress reports on a [weekly] basis [including an executive dashboard], against the Detailed Mobilisation Plan, which will set out:
- (a) the current status of the Mobilisation Activities;
 - (b) the Supplier's progress against all Milestones and other activities set out in the Detailed Mobilisation Plan, any actual or anticipated delays to the Detailed Mobilisation Plan and anticipated remedial activities in respect of such delay;
 - (c) the actual and anticipated risks and issues (including a RAID log as set out in Paragraph 5.2), the impact or likely impact of such risks and issues on the Detailed Mobilisation Plan and the associated mitigation actions being taken by the Supplier.

- 5.2 The Supplier shall maintain a RAID log which sets out (and promptly report to the Authority upon becoming aware of) any technical, commercial, delivery, financial, legal and other risks, assumptions, issues and dependencies in carrying out the Detailed Mobilisation Plan, including risk mitigation strategies, preventive measures and contingency plans for rapid recovery from the occurrence of all such risks and issues.

6 SECURITY AND SAFETY

- 6.1 The Supplier shall carry out its obligations under this Schedule in compliance with all applicable site safety and security procedures of the Authority and the Incumbent Supplier to the Authority (as applicable) and in accordance with the relevant provisions of the Agreement.

7 ACHIEVEMENT OF MILESTONES AND READINESS REVIEWS

- 7.1 The Supplier's achievement of the Milestones set out in the Detailed Mobilisation Plan shall be assessed in accordance with Schedule 6.2 (Testing Procedures).
- 7.2 Supplier shall cooperate with and assist the Authority in carrying out readiness reviews for the Mobilisation 8 weeks prior to the Operational Service Commencement Date in order to satisfy key Authority stakeholders that the relevant Services can be transferred to the Supplier without impact on business operations.

8 GOVERNMENT REVIEWS

- 8.1 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.

9 DELAYS

- 9.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority (and any applicable Service Recipients) in accordance with Clause 27.1 (Rectification Plan Process);
 - (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.;

ANNEX 1: OUTLINE MOBILISATION PLAN

The outline mobilisation plan is included within the response to question 3.3.1 of Schedule 4.1: Supplier Solution.

ANNEX 2: MINIMUM SET OF MOBILISATION COMPONENTS

Mobilisation component	Description
Mobilisation management	To set up and manage the Mobilisation , based on industry standard good practice project and programme management frameworks.
Data management	To perform the detailed data discovery of Service(s) and to manage and maintain the data from service transfer.
Governance	To implement governance for the Detailed Mobilisation Plan (for instance, the organisational forums) as detailed in Schedule 8.1 (<i>Governance</i>) and Schedule 6.1 (<i>Mobilisation</i>), to enable the management of the relationship between the Supplier and the Authority from the Effective Date.
Communication	To plan, prepare and implement an effective communication approach from Mobilisation Commencement Date, as jointly agreed by the Supplier and the Authority.
Staff transfer	To carry out the staff consultation and engagement to effect the smooth transition and integration of in scope roles/staff from Incumbent Supplier to the Supplier, as specified in Schedule 9.1 (<i>Staff Transfer</i>).
Pay, pension and benefits	To plan, prepare and implement the solutions for payroll, pensions and staff benefits.
Workforce management	To manage overall transferring and required workforce resourcing including: attrition, vacant roles, recruitment, backfill for key personnel, contract staff and grade mapping.

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Mobilisation component	Description
Knowledge transfer	To transfer the knowledge from the Incumbent Supplier to the Supplier for the transferred Service(s).
Induction and training	To provide induction information to the transferring staff relating to the Supplier. To deliver appropriate training for staff where needed for service provision under the Supplier's operating model.
In-flight projects	To assess and transfer in flight projects to the Supplier as appropriate. To implement the project management processes and tools to support the delivery of any new projects for the Authority after the transfer of Service(s).
Demand management	To develop processes and tools that enable the Supplier to manage all service requests.
Post Contract Verification	To undertake the detailed discovery to validate assumptions in the contractual documentation and to prepare a final report to agree and approve all Contract Changes prior to the defined period specified in the Agreement.
Asset validation	To validate and make accurate the list of in-scope assets for which management responsibility is to be transferred from the Authority and Incumbent Supplier to the Supplier, in accordance with Schedule 4.5 (<i>Assets</i>).
Operating model and service design	To design and deliver the operating model for service provision including (as a minimum): process, organisation, location, data, applications, tooling, technology and commercials.
Finance	To set up all the processes defined in the Agreement, Schedule 7.1 (<i>Fees</i>) and Schedule 7.5 (<i>Financial Reports, Financial Model and Audit Rights</i>) that the Supplier and the Authority shall use to provide financial information, ensuring the accurate and timely billing and payment for the Service(s).

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Mobilisation component	Description
Contract management	To implement processes and procedures to effectively manage the contract from the Operational Services Commencement Date, and handle queries, issues and Contract Changes as they arise during the Term.
Asset management	To take responsibility for the Incumbent Supplier's asset management solution and continue to operate it.
Reporting	Ensure the continued production of reports as specified in Schedule 6.1 (<i>Mobilisation</i>) and Schedule 8.2 (<i>Reports and Records</i>) in order to support Governance and operations.
Service continuity management	To perform gap analysis and report, agree and align the changes necessary to ensure no disruption to service throughout the transfer of Service(s).
Quality management	To provide assurance to the Supplier and the Authority that the Deliverables are complete, have met their quality criteria and the agreed processes have been observed.
Security management	To report, agree and align the activities necessary to ensure system security is maintained or enhanced during Mobilisation, as specified in Schedule 2.4 (<i>Security Management</i>).
User account provisioning	To set up infrastructure and user accounts including access rights to tools and applications needed for each role.
Testing	To provide evidence that the Supplier Solution as designed and developed is suitable for the delivery of the Service(s) and meets the Authority requirements.
Mobilisation readiness	To assess the state of Supplier readiness for a successful transfer and ongoing end to end provision of Service(s).

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Mobilisation component	Description
Cutover and Day 1 Experience	Over the weeks prior to the transfer of Service(s), to plan and prepare for a smooth transfer of the Service(s) from the Incumbent Supplier to the Supplier. On day of transfer of Service(s), to implement the cutover plan and transfer the Service(s) to the Supplier.
Post Mobilisation aftercare	To plan and implement support arrangements for the period following transfer of Service(s). To resolve issues arising from the transfer of Service(s).

SCHEDULE 6.2

TESTING PROCEDURES

1. GENERAL

- 1.1. The required testing procedures are as stated within the response to questions 3.3.1 - 3.3.3 of Schedule 4.1: Supplier Solution.

SCHEDULE 6.3

NOT USED

SCHEDULE 7.1

END-CUSTOMER FEES

DEFINITIONS

In this Schedule 7.1, the following definitions shall apply:

“CPI”	the Consumer Prices Index published by the Office For National Statistics.
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1 GENERAL PRINCIPLES

- 1.2 The fixed total cost per 1000 UIDs and the breakdown of the fixed total cost per 1000 UIDs is included within Annex 1: Cost Model.
 - 1.3 The total cost / 1000 UIDs is the full cost payable to the Supplier, inclusive of any third party costs, per 1000 UIDs issued for both physical and electronic UIDs.
 - 1.4 No price rise may be introduced in the first 12 months of the contract commencement date and any subsequent rises agreed between the two parties will be restricted in line with CPI.
-

ANNEX 1: COST MODEL

Information redacted in line with FOI Act Section 43(2).

SCHEDULE 7.2

NOT USED

SCHEDULE 7.3

VALUE FOR MONEY

PART A - CONTINUOUS IMPROVEMENT

9 CONTINUOUS IMPROVEMENT

- 9.1 As part of the Supplier's continuous improvement obligations, the Supplier shall produce at the start of each Contract Year a report of proposals for improving the provision of the Services and/or reducing the Fees (without adversely affecting the performance of this Agreement) during that Contract Year (**Continuous Improvement Report**) for the Authority's approval. The Continuous Improvement Report must include, as a minimum, proposals identifying:
- (a) relevant new and evolving technologies;
 - (b) changes in business processes of the Supplier or the Authority and ways of working that would provide cost savings and/or enhanced benefits to the Authority (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale)
 - (c) new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and
 - (a) measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 9.2 The initial Continuous Improvement Report for the first Contract Year shall be submitted by the Supplier to the Buyer for approval within six (6) Months following the first Operational Commencement Date.
- 9.3 The Supplier shall provide sufficient information with each suggested improvement to enable a decision by the Authority on whether to implement it. The Supplier shall provide any further information as reasonably requested.
- 9.4 If the Authority wishes to incorporate any improvement into this Agreement:
- (a) the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure; and
 - (b) the costs arising from any improvement shall have no effect on and are included in the Fees and the Supplier shall implement any Contract Change pursuant to Paragraph 9.4(a) at no cost to the Authority or End-Customer.
- 9.5 All costs relating to the compilation or updating of the Continuous Improvement Report shall have no effect on and are included in the Fees.
- 10 Not used
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SCHEDULE 7.4

FINANCIAL DISTRESS

DEFINITIONS

In this Schedule, the following definitions shall apply:

“Credit Rating Level”	a credit rating level as specified in Annex 2;
“Credit Rating Threshold”	the minimum Credit Rating Level for the Monitored Company as set out in Annex 3;
“Financial Distress Event”	<p>the occurrence of one or more of the following events:</p> <ul style="list-style-type: none">(a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;(b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement 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 the Monitored Company;(d) the Monitored Company committing a material breach of covenant to its lenders;(e) a Key Subcontractor (where applicable) notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or(f) any of the following:<ul style="list-style-type: none">(iv) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;(v) non-payment by the Monitored Company of any financial indebtedness;(vi) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or(vii) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company,

	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;
“Financial Distress Service Continuity 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;
“Monitored Company”	the Supplier, [the Framework Guarantor/ [and Call-Off Guarantor] or any Key Subcontractor]
“Rating Agencies”	the rating agencies listed in Annex 1.

1 CREDIT RATING

- 1.1 The Supplier warrants and represents to the Authority that as at the Effective Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 3.
- 1.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 1.3 If there is any downgrade credit rating issued by any Rating Agency for any Monitored Company, the Supplier shall ensure that the Monitored Company’s auditors (as the case may be) thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of a written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company (as the case may be);
- B is the value of all marketable securities held by the Monitored Company (as the case may be) determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company (as the case may be); and
- D the value at the relevant date of the current liabilities of the Monitored Company (as the case may be).

2 DUTY TO NOTIFY

2.1 The Supplier shall:

- (a) regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing:
 - (i) following the occurrence of a Financial Distress Event; and
 - (ii) of any fact, circumstance or matter which could cause a Financial Distress Event,
 - (iii) and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.2 For the purposes of determining whether a Financial Distress Event has occurred, the credit rating of the Monitored Company (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company (as the case may be) at or below the applicable Credit Rating Level.

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 Immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (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.

3.3 The Supplier shall (and shall procure that the other Monitored Companies shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (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 3.3(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 Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (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); and
 - (ii) provide such financial information relating to the Monitored Company as the Authority may reasonably require.
- 3.4 If the Authority does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure.
- 3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
 - (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and, subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 3.6.

4 TERMINATION RIGHTS

- 4.1 The Authority shall be entitled to terminate this Agreement 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 2.1;
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

5 PRIMACY OF CREDIT RATINGS

- 5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 1 (Credit Rating and Duty to Notify), if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
 - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 15.1(a)(ii).

ANNEX 1: RATING AGENCIES

Dun & Bradstreet

ANNEX 2: CREDIT RATING LEVELS

- Credit Rating Level 1
 - Dun & Bradstreet = 75

ANNEX 3: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier	1	75
Guarantor	1	75

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“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 Financial Reports;
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“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A.
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PART A: FINANCIAL TRANSPARENCY OBJECTIVES

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:

Understanding the Charges

- (a) for both Parties to be able to understand the Cost Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Agreeing the impact of Contract Change

- (c) for both Parties to agree the quantitative impact of any Contract Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Fees; and

Continuous improvement

- (d) for the Parties to challenge each other with ideas for efficiency and improvements;

(together the "Financial Transparency Objectives").

2 Not used

3 VISIBILITY THROUGH FINANCIAL REPORTING

- 3.1 The Supplier shall, if requested by the Authority, promptly provide to the Authority details of the elements used to make up any End-Customer Fees, including:
- (a) the Supplier's total fixed price for the Services and/or Deliverables;
 - (b) the margin included in that total fixed price;
 - (c) a list of the agreed prices against each manpower grade in the Financial Model;
 - (d) a list of the costs underpinning those prices for each manpower grade in the Financial Model, being the price less the margin;
 - (e) a summary of the costs broken down against each Service and/or Deliverable;
 - (f) details of any other manpower costs, not already included in these rates, for all activities to be undertaken;
 - (g) explanation of any underlying assumptions regarding:
 - (i) overtime rates;
 - (ii) standard hours;

- (iii) accommodation charges; and
- (iv) discounts applied;
- (h) a resource estimating model to support the End-Customer Fees and any Changes (if applicable);
- (i) a breakdown of manpower resources by the number and type of Supplier Personnel (including any Sub-contractors) required for each Deliverable and/or Service and free of any contingency. This should also apply to third party costs;
- (j) the total price of Deliverables broken down by volume, unit cost and margin;
- (k) any additional activities, costs and, risks that may impact the Authority and which are not already covered by the End-Customer Fees;
- (l) an explanation of the type and value of risk associated with the provision of Services, including the amount of money attributable to each risk;
- (m) an explanation and supporting details of any financing costs applicable to the Agreement;
- (n) the actual End-Customer Fees profile for each Service Period; and
- (o) any additional information as the Authority reasonably requires.

SCHEDULE 7.6

NOT USED

SCHEDULE 8.1

GOVERNANCE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Contract Management Representatives”** in respect of a Review Meeting, those contract management team representatives of either Party whose attendance is reasonably required to achieve the aims and objectives of the meeting, and any other persons considered by the Authority to be necessary for the review; and
- “Review Meeting”** a review meeting to consider the progress of the Agreement, discuss the Management Information and to review any operational issues that have arisen in the preceding review meetings.

2 MANAGEMENT OF THE SERVICES

- 2.1 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

Meetings

- 2.2 Each Party shall ensure that its Contract Management Representatives shall make all reasonable efforts to attend Review Meetings at which that Contract Management Representative is required. If any Contract Management Representative is not able to attend a Review Meeting, that person shall use all reasonable endeavours to ensure that:

- (c) a delegate attends the relevant Review Meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- (d) that he/she is debriefed by such delegate after the Review Meeting.

- 2.3 Review meetings shall be quorate as long as at least two representatives from each Party are present.

- 2.4 The provisions of this Schedule are without prejudice to other provisions of this Agreement which require regular meetings to take place between the Parties in connection with the delivery of the Services (including Performance Review Meetings) and such other meetings which may be held with Other Suppliers and/or other third parties that the Authority may request from time to time. For the avoidance of doubt, such meetings shall also form part of the governance of this Agreement and the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf.

3 CONTRACT MANAGEMENT MECHANISMS

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

- 3.2 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.

4 REVIEWS

4.1 The Parties shall attend Review Meetings at the following frequency:

Contract Review	Quarterly
Performance Review	Monthly

The Parties shall agree the format of the Review Meetings (for example, face to face or telephone conference) in advance.

4.2 The Supplier shall provide the Authority with the most up to date Management Information relating to the previous two quarters at least 5 Working Days before each Review Meeting.

Annual Review

4.3 The Parties shall hold an annual Review Meeting on a date to be agreed between the Parties or, in the absence of such agreement, within 20 Working Days of the anniversary of the Operational Service Date. The annual Review Meeting will be attended by the Authority's Senior Responsible Owner and the Contract Management Representatives.

4.4 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:

- (a) the Supplier's performance in respect of the KPIs (including any relevant KPIs trends analysis and whether the KPIs reflect improvements in the Services over the Term and any efficiency gains made by the Supplier);
- (b) any changes which may need to be made to the Services; and
- (c) future requirements in relation to the Services.

4.5 The Authority shall prepare a report of its findings from the annual Review Meeting and discuss with the Supplier how any proposed changes to the Agreement and/or to the Services shall be addressed. Any Contract Changes to be implemented in accordance with this Paragraph 4.5 shall be implemented in accordance with the Change Control Procedure.

Quarterly Review

4.6 The Parties shall hold a quarterly Review Meeting, on a date to be agreed between the Parties. The quarterly Review Meeting will be attended by the Authority's Commercial Manager and Contract Manager and the Contract Management Representatives.

4.7 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:

- (d) overall performance against KPIs;
- (e) volume trends/general trend analysis;
- (f) compliance and satisfaction levels;
- (g) sustainability strategy and performance;
- (h) business continuity issues and updates;
- (i) proposals for improvements;
- (j) financial stability;
- (k) risk assessments; and
- (l) any security issues and the Security Management Plan.

4.8 The quarterly Review Meeting shall be fully minuted by the Supplier. The prepared minutes shall be circulated by the Supplier to all attendees of the meeting, the Authority Representative and any other recipients agreed at the meeting. The minutes of each quarter's Review Meeting will be agreed between the Supplier Representative and the Authority Representative within 14 days of initial circulation.

Monthly Review

4.9 A monthly Review Meeting will be held on a date to be agreed between the Parties. The monthly Review Meeting will be attended by the Authority's Commercial Manager and Contract Manager and the Contract Management Representatives.

4.10 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:

- (a) the progress of the contract;
- (b) the Management Information; and
- (c) any problems which have arisen in the preceding months.

4.11 The monthly Review Meetings must be fully minuted by the Supplier. The prepared minutes shall be circulated by the Supplier to all attendees of the Review Meeting and also to the Authority Representative and any other recipients agreed at the meeting. The minutes of each month's Review Meeting will be agreed between the Supplier Representative and the Authority Representative within 10 days of initial circulation.

5 Contract Management Roles and Dispute Escalation Levels

5.1 The Parties shall assign personnel with the appropriate skills and experience to perform the roles and responsibilities listed in the table below and where indicated as a "key role" below, the personnel is Key Personnel.

Role	Key Role	Responsibilities	Contact Name, Title & Contact Details		Escalation Level
			Authority	Supplier	
Senior Responsible Owner	No	Overall responsibility for delivery of the contract.	Personal information redacted.	Personal information redacted.	3
Commercial Director	No	Overall responsibility for the Commercial integrity of the contract.	Personal information redacted.	Personal information redacted.	2
Commercial Contract Manager	No	Responsible for overseeing the Contract Review process.	Personal information redacted.	Personal information redacted.	1

5.2 Subject to Clause 11.3 and Schedule 9.2 (*Key Personnel*), in the event that the Supplier wishes to replace any of its representatives in the roles listed in Paragraph 5.1, the Supplier shall notify the Authority in writing of the proposed change for the Authority's agreement (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority representative has at all times a counterpart representative of equivalent seniority and expertise.

5.3 The Authority may, by written notice to the Supplier, revoke or amend the authority of any of its representatives in the roles listed in Paragraph 5.1 or appoint a new representative into the role.

6 Specific Contract Management Requirements

6.1 Detailed management information (refer to KPI's).

7 Supplier Relationship Management

7.1 The Authority's aim is to create a strong, shared supplier relationship management (SRM) approach which engenders, encourages and rewards the implementation of innovative solutions to achieve objectives.

7.2 The Authority's intention is, through innovative thinking, to work with suppliers post contract award to produce better solutions at a lower cost, without compromising customer service, than would otherwise be achieved without change.

7.3 The Supplier shall take a pro-active approach to the Authority's supplier relationship management (SRM) activity to ensure the strategic aims are achieved through the use by the Supplier of an effective account management structure.

- 7.4 The Supplier shall ensure that the Supplier Representative, who will be responsible for Authority account management, has the necessary authority to influence any operational activities that may be necessary to help strategic objectives and initiatives to be achieved.
- 7.5 The Supplier shall ensure that it commits to Authority account management in support of Supplier relationship management activity. The Supplier shall ensure that the Supplier Representative and is accessible to the Authority at all times during normal working hours (Mon - Fri 08:30 to 17:30), subject to the provisions of Clause 14.3 to 14.5 (*Key Personnel*).
- 7.6 The Authority may require the Supplier, at any time during the Term, to complete:
- (a) an Authority supplier performance management (SPM) questionnaire using the e-sourcing portal;
 - (b) supplier chain risk management questionnaires such as CAESER (now known as “Corporate Responsibility” and details of which can be found at <https://nqc.com/corporate>); and/or
 - (c) data and information assurance assessments or questionnaires such as HADRIAN (now known as “Cyber Security” and details of which can be found at <https://nqc.com/cybersecurity>).

SCHEDULE 8.2

REPORTS AND RECORDS

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 transparency reports in accordance with Annex 1 (**Transparency Reports**).
- 1.2 If the Authority rejects any proposed 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

- 1.5 The Supplier shall provide to the Authority:
 - (a) the reports listed, and at the frequencies set out, in Annex 2 to this Schedule 8.2 (*Reports and Records*); and
 - (b) any or all of the following reports at the Authority's request:
 - (i) delay reports;
 - (ii) reports relating tests carried out under Schedule 6.2 (*Testing Procedures*), Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Capability*);
 - (iii) Performance Monitoring Reports;
 - (iv) reports which the Supplier is required to supply as part of the Management Information;
 - (v) annual reports on the Insurances;
 - (vi) security reports;
 - (vii) an SME report, which contains information in relation to Sub-contractors including (without limitation): the name, postal address and registration number of the relevant Sub-contractor; the commencement and expiry dates of the relevant Sub-contract; the relevant Sub-contract value and spend in the relevant quarter; and
-

the number of apprentices employed in relation to that Sub-contract;
and

(viii) Force Majeure Event reports.

3 RECORDS

3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in this Agreement (together “**Records**”):

- (a) in accordance with the requirements of the Public Records Office (PRO) 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 agrees that it shall:

- (a) store all records and reports that it is obliged to maintain and provide pursuant to this Agreement in such document repository or system that the Authority may have or put in place for the storing, sharing and management of records and reports as it may notify to the Supplier from time to time (“**Document Repository**”); and
- (b) comply with such guidance as the Authority may issue or provide in relation to the Document Repository from time to time.

It is acknowledged and agreed that the Authority may also use the Document Repository as a means of uploading and storing its documents that the Supplier may need to access from time to time.

3.3 Notwithstanding the provisions of paragraph 3.2, the Supplier shall on demand, at no cost to the Authority and without imposing any restrictions, make the Records available for inspection to and/or copying by the Authority and/or its nominee in a format reasonably accessible to the Authority, subject to the Authority giving reasonable notice.

3.4 The Supplier shall hold Records in electronic format (and, if required by the Authority, paper format) and must be made available and/or be accessible to the Authority and its Audit Agents for audit purposes.

3.5 The Supplier shall, during the Term and a period of at least seven years following the expiry or termination of this Agreement:

- (a) maintain or cause to be maintained in safe storage complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records and Open Book Data; and
- (b) upon reasonable notice, disclose and allow the Authority and/ or its Audit Agents the right to access the information described at Paragraph 3.5(a).

- 3.6 Following the expiry of seven years after the expiry or termination of this Agreement, the Supplier shall securely dispose of or provide to the Authority all Records without keeping any copies and if required to do so by the Authority, the Supplier shall provide written confirmation of compliance with this Paragraph 3.6.
- 3.7 The provisions of Paragraph 3.6 shall not apply to the extent that the Supplier is required to retain the Records by any applicable Law or for the purposes of any audit.

ANNEX 1: TRANSPARENCY REPORTS

The required transparency reports will be agreed as required, between the two parties after the contract commencement date.

<u>TITLE</u>	<u>CONTENT</u>	<u>FORMAT</u>	<u>FREQUENCY</u>
<i>(Performance)</i>			
<i>(Fees)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

ANNEX 2: REPORTS TO BE PROVIDED BY THE SUPPLIER

Reference	Report Title	Report Frequency	Report Content
Schedule 6.1 <i>Implementation</i> , paragraph 6.5	Implementation Report	Weekly	See paragraph 6.5 in Schedule 6.1 <i>Implementation</i>

ANNEX 3: 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 Fees.
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 2.4 (*Security Management*).
18. A complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Agreement, in order to monitor any actual or suspected slavery or human trafficking in those supply chains in compliance with the Suppliers' obligation in Clause 35.5.

19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

SCHEDULE 8.3

CHANGE CONTROL PROCEDURE

1 DEFINITIONS

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;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time as identified in Schedule 9.2 (<i>Key Personnel</i>) or otherwise 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 Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this 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;
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- (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) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for mobilisation, then 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 testing and/or mobilisation.
- 2.5 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.
- 2.6 The Supplier shall:
- (a) within ten (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

The Authority shall never be required to pay for the Supplier's costs in relation to any Change Request.

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 ten (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 Contract Change including the reason for the Contract Change;
 - (b) details of the impact of the proposed Contract Change on the Services 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 KPIs and/or the Target Performance Levels;
 - (ii) the format of Authority Data and End-Customer Data, as set out in the Services Description;
 - (iii) the Milestones, Mobilisation Plan or Project Plan and any other timetable previously agreed by the Parties; and/or
 - (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) subject always to paragraph 3, above, details of the cost of implementing the proposed Contract Change;
 - (e) subject always to paragraph 3, above, details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the End-Customer Fees charged to End-Customers, 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 mobilisation, 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 UK, the preparation of the Impact Assessment shall also be subject to Schedule 2.8 (Data Protection).
- 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.
- 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 five (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 ten (10) Working Days of receiving such notification. The Supplier shall ensure that the reissued Impact Assessment will contain the information requested by the Authority. 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 5.1(e) shall:
- (a) be based on the Models;
 - (b) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (c) include full disclosure of any assumptions underlying such Impact Assessment;
 - (d) include evidence of the cost of any assets required for the Contract Change; and
 - (e) include details of any new Sub-contracts necessary to accomplish the Contract Change.
- 5.6 The Authority may request that any Impact Assessment presents Charges without indexation for the purposes of comparison.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (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 five (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 ten (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 (2) 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 ten (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 five (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 REJECTION

- 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 five (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 four (4) in any twelve (12) month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed 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 fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (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 four (4) in a twelve (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 timescale 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 the Supplier Change Manager, as applicable. The provisions of Clause 44 (Notices) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

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

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

SCHEDULE 8.4

DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Dispute Representative”	a person identified as escalation level 1, 2 or 3 in Paragraph 5 (<i>Contract Management Roles and Dispute Escalation Levels</i>) of Schedule 8.1 (<i>Governance</i>). “Level 1 Dispute Representative” shall be interpreted as any such person identified as escalation level 1 and “Level 2 Dispute Representative” and “Level 3 Dispute Representative” shall be interpreted accordingly.
“Counter Notice”	has the meaning given in Paragraph 3.17;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 3.14 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 5;
“Related Third Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Related Third Party Dispute Representatives”	has the meaning given in Paragraph 3.26;
“Related Third Party Dispute Resolution Board”	has the meaning given in Paragraph 3.26;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Related Third 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

3.2 If a Dispute arises then:

- (d) the Level 1 Dispute Representatives shall attempt in good faith to resolve the Dispute; and
-

- (e) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

3.3 A Dispute Notice shall set out:

- (v) the material particulars of the Dispute;
 - (vi) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (vii) 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 3.22 and 3.23 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 Related Third Party Dispute, in which case Paragraph 3.4 shall apply.

3.4 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Related Third Party Dispute pursuant to Paragraph 5.1(b), then:

- (a) if it is served by the Authority it shall be treated as a Related Third Party Dispute 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 8 shall apply.

3.5 Subject to Paragraphs 3.6 and 3.9 and so long as the Authority has not served a Related Third Party Dispute 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); and
- (b) lastly by recourse to arbitration (as prescribed in Paragraph 6) or litigation (in accordance with Clause 47 (Governing Law and Jurisdiction)).

3.6 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 3.13.

3.7 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 Related Third Party Dispute Initiation Notice or proceedings under Paragraph 7 (Urgent Relief).

3 EXPEDITED DISPUTE TIMETABLE

3.8 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 five (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.

- 3.9 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.8 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 3.11, ten (10) Working Days;
 - (b) in Paragraph 3.14, five (5) Working Days; and
 - (c) in Paragraph 3.17, ten (10) Working Days.
- 3.10 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. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

4 COMMERCIAL NEGOTIATION

- 3.11 Following the service of a Dispute Notice, then, so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, the Parties shall refer the Dispute to the Level 2 Dispute Representatives for consideration and resolution. If the Parties are unable to resolve the Dispute within [fifteen (15)] Working Days of escalation to the Level 2 Dispute Representatives, then the Authority may, at its sole discretion, escalate any Dispute to the Level 3 Dispute Representatives for resolution. If the Parties are unable to resolve the Dispute within [five (5)] Working Days of escalation to the Level 3 Dispute Representatives then the provision of paragraph 3.12 shall apply.
- 3.12 If the Parties have not settled the Dispute in accordance with Paragraph 3.11 within thirty (30) Working Days of service of the Dispute Notice, and where the Dispute is of a kind referred to in Paragraph 5.1, either Party may serve a written notice to proceed to Expert Determination in accordance with Paragraph 3.13. For Disputes which are not of a kind referred to in Paragraph 3.13, the Parties have a right to refer the Dispute to arbitration in accordance with Paragraph 6.

5 EXPERT DETERMINATION

- 3.13 If a Dispute relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 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.
- 3.14 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 3.13, 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 5.1(a)) or 5.1(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 fifteen (15) Working Days of the relevant request made pursuant to Paragraph 3.13, such body as may be specified by the President of the Law Society on application by either Party.

3.15 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 fraud or manifest error) be final and binding on the Parties, unless within twenty (20) Working Days of that decision a Party serves notice on the other Party referring the Dispute to either arbitration or court proceedings pursuant to Paragraph 7;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (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 twenty (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.

6 ARBITRATION

3.16 Subject to compliance with its obligations under Paragraph 3.11 and to the provisions of Paragraph 5, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 3.20.

3.17 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (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 3.20 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 fifteen (15) Working Day period.

- 3.18 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 3.20 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.
- 3.19 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 3.17, the Supplier may either commence arbitration proceedings in accordance with Paragraph 3.20 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 3.20 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 3.16 to 3.19:
- (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 5.1(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 ten (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 Authority shall decide in its discretion whether the Dispute shall be determined by a single arbitrator or a panel of three arbitrators. The single arbitrator or chair of the arbitral tribunal shall be a senior English-qualified lawyer who shall be a QC of at least ten years standing or a retired judge;
 - (f) the arbitration proceedings shall take place in London and in the English language; and
 - (g) the seat of the arbitration shall be London.

7 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party’s Intellectual Property Rights; and/or

- (b) where compliance with Paragraph 3.2 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

8 MULTI-PARTY DISPUTES

- 3.21 All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 (the “Related Third Party Dispute Resolution Procedure”).
- 3.22 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 Related Third Party Dispute and to serve a notice on the Supplier which sets out the Authority’s determination that the Dispute is a Related Third Party Dispute and specifies the Related Third Parties which are to be involved in the Related Third Party Dispute Resolution Procedure, such notice a “Related Third Party Dispute Initiation Notice”.
- 3.23 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 6, 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.
- 3.24 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
 - (a) a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or
 - (b) not a Related Third 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 7.
- 3.25 If the Authority has determined, following a Supplier Request, that a Dispute is not a Related Third Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 3.26 Following service of a Related Third Party Dispute Initiation Notice a Related Third Party Dispute shall be dealt with by a board (in relation to such Related Third Party Dispute, the “Related Third Party Dispute Resolution Board”) comprising representatives from the following parties to the Related Third Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Related Third Party Dispute:
 - (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Related Third Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,(together “Related Third Party Dispute Representatives”).

3.27 The Parties agree that the Related Third Party Dispute Resolution Board shall seek to resolve the relevant Related Third Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Related Third Party Dispute Representatives attend, and shall use their best endeavours to procure that the Related Third Party Dispute Representatives of each Related Third Party attend, all meetings of the Related Third Party Dispute Resolution Board in respect of the Related Third Party Dispute;
- (b) the Related Third Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Related Third Party Dispute 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 five (5) Working Days of service of the relevant Related Third Party Dispute 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 9.00 am and 5.00 pm on a Working Day; and
- (c) in seeking to resolve or settle any Related Third Party Dispute, the members of the Related Third Party Dispute Resolution Board shall have regard to the principle that a Related Third 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 Related Third Party Dispute.

3.28 If a Related Third Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Related Third Party Dispute Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may request that the Related Third Party Dispute is referred to an expert in which case Paragraph 5 shall apply; and/or
- (b) subject to Paragraph 3.27, Paragraph 6 shall apply to the Related Third 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.

3.29 If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 6 or a Dispute becomes a Related Third 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.

SCHEDULE 8.5

EXIT MANAGEMENT

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Assistance Commencement Date"	has the meaning set out in Paragraph 1.1(c)
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services to the Authority;
"Exit Information"	has the meaning given in Paragraph 4.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 3.4 for managing the Parties' respective obligations under this Schedule;
"Government Controlled Company"	means any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law;
"Fair Market Value"	means the transfer value of any applicable assets or consumables, as determined with reference to assets of a similar type and condition, bought and sold in 'arms length' transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties;
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"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;
"Public Procurement Process"	means the acquisition by public means of a public contract of works, suppliers or

services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, suppliers or services are intended for a public purpose, as the same is defined (as 'procurement') in section 2 of the Public Contracts Regulations 2015;

"Registers"	the register and configuration database referred to in Paragraphs 1.1(a) and 1.1(b);
"Services Transfer Date"	the date on which the Services are transferred from the control of and provision by the Supplier to the control of and provision by a Replacement Supplier;
"Termination Assistance Notice"	has the meaning given in Paragraph 6.1;
"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 by the Parties from time to time;
"Termination Services"	the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Transferring Assets"	has the meaning given in Paragraph 1.1(a);
"Transferring Contracts"	has the meaning given in Paragraph 1.1(c);
"Transferring Services"	means the Services or parts of a Service which are removed by the Authority in accordance with the provisions of the Agreement including on termination of the Agreement (in whole or in part);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, and any other services required pursuant to the Termination Assistance Notice.

2 OVERVIEW

- 2.1 This Schedule sets out the exit management process by which the Supplier shall transfer Services to a Replacement Supplier (including to the Authority or a Government Controlled Company).

3 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 3.1 The Supplier shall within 30 days from the Effective Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 3.2 The Supplier shall, within three (3) months following the Effective Date and during the Term:
- (a) create and maintain a register of all Assets including their description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Services; and
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services,
- (the “Registers”)
- 3.3 The Supplier shall ensure 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.
- 3.4 Each Party shall appoint an Exit Manager within three (3) months of the Effective Date. The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point(s) during the Term, the Supplier shall provide to the Authority such reasonable assistance as the Authority may require to enable the Authority to retender for Replacement Services and 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 (including access to it) 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 and/or to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier:
- (a) details of the Service(s);
 - (b) a copy of the Registers (including details of where and how the Registers are held), updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data and End-Customer 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 or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Agreement, such information to include the Staffing Information as defined in Schedule 9.1 (*Staff Transfer*); and
- (g) such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) 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.
- 4.3 The Supplier shall provide updates of the Exit Information on an as-requested basis as soon as reasonably practicable and shall notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely affect the financial condition, business or operations of the Authority or adversely impact upon the potential transfer and/or continuance of any Services, and shall consult with the Authority in relation to any such changes.
- 4.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Supplier.
- 4.5 Should the Transfer of Undertaking (Protection of Employment) (TUPE) apply upon termination of the contract, no later than two (2) months prior to the Services Transfer Date, the Supplier shall provide to the Authority and/or its Replacement Supplier an example of the Supplier's format of the payroll information using anonymised data to assist the Authority and/or its Replacement Supplier to carry out a trial run of the payroll for the Transferring Employees.

5 EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority the draft Exit Plan submitted in question 3.1.8 of the tender exercise, in a format agreed by the Authority which:
 - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of Services (or a particular sub-set of the Services) from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination (in whole or in part) of this Agreement, and the maintenance of a 'business as usual' environment for the Authority during the Termination Assistance Period;
 - (b) complies with the requirements set out in Paragraph 5.3;
 - (c) is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree 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) a detailed description of both the transfer and cessation processes, including a timetable;
- (b) how the Services will transfer to the Replacement Supplier(s) and/or the Authority;
- (c) details of any contracts which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- (d) proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the Services Transfer Date;
- (e) proposals for providing the Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;
- (f) proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Services;
- (g) proposals for the identification and return of all Authority Assets in the possession of and/or control of the Supplier or any third party;
- (h) proposals for the disposal of any redundant Deliverables and materials;
- (i) how the Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period;
- (j) any other information or assistance reasonably required by the Authority or a Replacement Supplier;
- (k) how the Termination Services would be provided (if required) during the Termination Assistance Period, together with a timetable, any critical issues, any charges applicable in accordance with this Agreement and a capped estimate of such charges, in each case for those Termination Services; and
- (l) procedures to:
 - (i) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);
 - (ii) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and

- (iii) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees.

5.4 The Supplier shall:

- (a) maintain and update the Exit Plan no less frequently than:
 - (i) once every six (6) months;
 - (ii) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan; and
 - (iii) as soon as reasonably possible following a Termination Assistance Notice or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), and in any event no later than twenty (20) Working Days after the date of the Termination Assistance Notice, to prepare a final form that could be implemented immediately;
 - (iv) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services,

and shall submit each updated Exit Plan for the Authority's agreement in accordance with paragraph 5.2 above; and

- (b) jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.

5.5 Only if (by notification to the Supplier in writing) the Authority agrees with a draft Exit Plan provided by the Supplier under Paragraph 5.2, shall that draft become the Exit Plan for this Contract.

5.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5.7 In the event that Termination Assistance is required by the Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 5.2, the Supplier shall provide the Termination Services in good faith and in accordance with the principles in this Schedule and the last Authority approved version of the Exit Plan (insofar as it still applies).

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**");

- (a) 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; or

- (b) where, pursuant to any right under the Agreement or at Law, the Authority has given written notice to remove any Services (or a particular sub-set of the Services) from the scope of the Agreement (whether following a competitive bid process or otherwise).

The Termination Assistance Notice shall specify:

- (c) the date from which the Supplier shall commence providing the Termination Services ("**Assistance Commencement Date**");
- (d) the nature of the Termination Services required; and
- (e) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 12 months after the date that the Supplier ceases to provide the Services.

- 6.2 The Authority shall have 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 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. The Authority shall have 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 otherwise perform its obligations under this Agreement and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - (b) provide to the Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Authority or the Replacement Supplier including assistance and/or access to allow the Services to continue without interruption following the 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 1.1(b) without additional costs to the Authority; and
 - (d) subject to Paragraph 6.5, provide the Services and the Termination Services at no detriment to the KPI's, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Agreement;
 - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority; and

- (f) seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of any Assets is required.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 1.1(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 1.1(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 KPI's, the Parties shall vary the relevant KPI(s) and/or any applicable Service Credits to take account of such adverse effect.

7 TERMINATION OBLIGATIONS

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 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), 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. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (iv) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (v) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (vi) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (vii) any items that have been on-charged to the Authority, such as consumables;

- (e) vacate any Authority Premises;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (viii) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ix) 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 such requests for access.
- 7.3 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), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party 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.
- 7.4 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.
- 8 ASSETS, SUB-CONTRACTS AND SOFTWARE**
- 8.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, 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 Fees chargeable to End-Customers;
 - (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.
- 8.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 1.1(e), the Authority shall provide written notice to the Supplier setting out:
- (a) which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferring Assets; and

(ii) the Non-Exclusive Assets,

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

(c) which, if any, of the Sub-contracts the Authority does not require to be assigned or novated to the Authority and/or the Replacement Supplier and all other Sub-contracts shall be 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. The Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferring Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for their Net Book Value.

8.4 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 them.

8.5 Where the Supplier is notified in accordance with Paragraph 1.1(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferring 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.

8.6 During the Termination Assistance Period, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Transferring Contracts used wholly or mainly to provide the Transferring Services to expire, without the Authority's prior written consent (such consent not to be unreasonably withheld).

8.7 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Authority and/or the Replacement Supplier. The Supplier shall provide full copies of the Transferring Contracts to the Authority (and/or the Replacement Supplier at the Authority's request) no less than 4 weeks before the date the novation or assignment is to take effect. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

8.8 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.
- 8.9 The Supplier shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has taken place.
- 8.10 The Supplier shall transfer to the Replacement Supplier the benefit of any manufacturers' warranties ("**Manufacturer's Warranties**") applicable wholly to the Transferring Services where the Supplier is able to transfer the benefit thereunder. To the extent that the benefit of any such Manufacturer's Warranty cannot be transferred to the Replacement Supplier except by way of a novation agreement or by obtaining a consent, an approval, a waiver or the like from the manufacturer or other third party ("**Consents**"):
 - (a) the Supplier shall (unless otherwise agreed) use commercially reasonable efforts to procure such Consents or the novation of the relevant Manufacturer's Warranties to the Replacement Supplier; and
 - (b) unless or until any such Manufacturer's Warranty is so novated or any necessary Consent is obtained, the Supplier will receive and hold the benefit of the relevant Manufacturer's Warranty for the Replacement Supplier and the Authority will pay or reimburse any sums (as agreed between the Parties) properly payable in connection with such Manufacturer's Warranty after each Services Transfer Date, as the case may be.
- 8.11 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 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

9 SUPPLIER PERSONNEL

- 9.1 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 9.1 (*Staff Transfer*) shall apply.
- 9.2 The Supplier shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Authority 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 or Replacement Sub-contractor.

- 9.3 During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:
- (a) give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
 - (b) consent to any election by the Authority, Replacement Supplier and/or Replacement Sub-contractor to carry out pre-transfer collective consultation under S198A - 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 and thereafter facilitate such consultation;
 - (c) co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.
- 9.4 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 either where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy or where an offer is made pursuant to an express right to make such offer under Schedule 9.1 (*Staff Transfer*) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

10 FEES

- 10.1 The Supplier shall not charge 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.

11 APPORTIONMENTS

- 11.1 Where applicable, 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:
- (d) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (e) 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

- (f) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 11.1 as soon as reasonably practicable.

12 DISPUTES

During any Termination Assistance Period, the Supplier shall maintain and update a list of on-going and/or threatened disputes in relation to any of the Supplier's Solution or Transferring Contracts in so far as they relate to the Transferring Services and shall use its commercially reasonable efforts to resolve such disputes. The Supplier shall not settle any such dispute(s) nor accept any liability (either on its own behalf or that of the Authority) without obtaining the Authority's prior written consent (which shall not be unreasonably withheld) where any such settlement affects the interests of the Authority.

13 Ethical Walls Agreement

The Supplier shall prior to the expiry or earlier termination of this Agreement enter into an agreement in the form set out at Annex 1 of this Schedule 8.5 without which the Authority may elect at its sole discretion that the Supplier may not take part in any future procurement exercise carried out by the Authority in relation to the Services (including Replacement Services).

ANNEX 1: ETHICAL WALLS AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS of 100 Parliament Street, Westminster, London SW1A 2BQ (the "Authority"); and
- (2) [NAME OF COUNTERPARTY] whose [registered office][principal place of business] is at [ADDRESS OF COUNTERPARTY][and whose company number is [COUNTERPARTY COMPANY NUMBER]] (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").
- B. The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "Purpose").
- C. The parties wish to enter into this Agreement to ensure a set of management processes, barriers and disciplines are put in place that ensure 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 any person who is a subcontractor, subsidiary, subsidiary undertaking or holding company of the Counterparty;

"Agreement" means this ethical wall agreement duly executed by the Parties;

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

"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 [] dated [] between the Authority and the Counterparty and/or an Affiliate;

“Government Body” means a Crown body or any department, agency, office or other emanation of the Crown together with any of its arms length bodies;

“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 or an Affiliate (or, where relevant, by an Other Bidder) in response to an ITT;

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

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

“Parties” means the Authority and the Counterparty;

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

- 1.2 Reference to the disclosure of information includes any communication or making available of 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 the representatives of any person includes the officers, directors, employees, advisers and agents of that person 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;
- 1.5 Reference to persons includes legal and natural persons;
- 1.6 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time;
- 1.7 Reference to clauses and recitals is to clauses of and recitals to this Agreement;
- 1.8 Reference to any gender includes any other;
- 1.9 Reference to writing includes email;

- 1.10 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;
- 1.11 The words “include” and “including” are to be construed without limitation;
- 1.12 The singular includes the plural and vice versa; and
- 1.13 The headings contained in this Agreement shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
- 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the 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;
- 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with the 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
- 2.1.3 where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.
- 2.2 The Counterparty shall:
- 2.2.1 not assign any of the Conflicted Personnel to the Bid Team at any time;
- 2.2.2 provide to the 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;
- 2.2.3 ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
- (a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or

- (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation its participation in the ITT Process becoming available to the Bid Team.
 - 2.2.4 ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
 - 2.2.5 ensure that confidentiality agreements which flow down the Counterparty's obligations in this 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;
 - 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
 - 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
 - 2.2.8 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;
 - 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
 - 2.2.10 comply with any other action as the Authority, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:
- 2.3.1 notify the Authority immediately of all potential and/or actual conflicts of interest that arise; and
 - 2.3.2 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
 - 2.3.3 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 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the 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 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- 2.9.1 the Counterparty or any Affiliate or Representative; or
- 2.9.2 any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this 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.
- 2.10 The Counterparty acknowledges and agrees that:
- 2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
- 2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

- 3.1 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.

4 WAIVER AND INVALIDITY

- 4.1 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.
- 4.2 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.

5 ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 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:
- 5.2.1 any Government Body; or
 - 5.2.2 to a body other than a Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - 5.2.3 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 6.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 Save for any other Government Body whose information is disclosed pursuant to or by virtue of this Agreement, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. For the avoidance of doubt, the consent of any person who is not a party to this Agreement is not required to effect a termination or variation of this Agreement.
- 6.2 Any Government Body whose information is disclosed pursuant to or by virtue of this Agreement shall have the right to enforce the terms of this Agreement as though it is the Authority.

7 TRANSPARENCY

- 7.1 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.

8 NOTICES

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 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™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	Counterparty	Authority
Contact		
Address		

Email		
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- 8.4 This Clause 9 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this 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.
- 9.2 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.

10 GOVERNING LAW AND JURISDICTION

- 10.1 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.
- 10.2 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:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

SCHEDULE 8.6

BUSINESS CONTINUITY AND DISASTER CAPABILITY

1 DEFINITIONS

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);
“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 period of 24 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Capability Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Capability Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Related Service Provider”	any person who provides services to the Authority in relation to this Agreement from time to time as at the Effective Date.

2 BCDC PLAN

2.1 Within forty (40) Working Days from the 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; and
- (b) ensure the recovery of the Services in the event of a Disaster.

2.2 The BCDC Plan shall:

- (a) be divided into three parts:
 - (i) Part A which shall set out general principles applicable to the BCDC Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and
 - (iii) Part C which shall relate to disaster capability (the **“Disaster Capability Plan”**); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.

- 2.3 Following receipt of the draft BCDC Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft BCDC Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft BCDC Plan no later than twenty (20) Working Days after the date on which the draft BCDC Plan is first delivered to the Authority.

- 2.4 If the Authority rejects the draft BCDC 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 BCDC Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDC Plan to the Authority for the Authority's approval within twenty (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 BCDC Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 PART A OF THE BCDC PLAN: GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDC Plan shall:

- (a) set out how the business continuity and disaster capability elements of the BCDC Plan link to each other;
- (b) detail how the BCDC Plan links and interoperates with any overarching and/or connected disaster capability or business 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;
- (c) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDC Plan; and
- (d) provide details of how the invocation of any element of the BCDC Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (e) 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 and disaster capability where applicable;
- (f) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (g) 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.
- (h) contain a communication strategy;
- (i) provide for documentation of processes, including business processes, and procedures;

- (j) 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; and
 - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (k) identify the procedures for reverting to “normal service”;
- (l) 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;

3.2 The BCDC 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 BCDC Plan;
- (b) the adverse impact of any Disaster, service failure, 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 27002 and all other industry standards from time to time in force; and
- (d) it details a process for the management of disaster capability testing.

3.3 The BCDC Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the KPIs 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 PART B OF THE BCDC PLAN - BUSINESS CONTINUITY PLAN

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 KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs 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 **PART C OF THE BCDC PLAN - DISASTER CAPABILITY PLAN**

5.1 The Disaster Capability 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 Capability Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Capability Plan shall include an approach to business continuity and disaster recover that addresses the following:

- (a) loss of access to the Authority Premises;
- (b) loss of utilities to the Authority Premises;
- (c) loss of the Supplier's helpdesk system;
- (d) loss of a Sub-contractor;
- (e) emergency notification and escalation process;
- (f) contact lists;
- (g) staff training and awareness;
- (h) BCDC Plan testing;
- (i) post implementation review process;
- (j) any applicable KPIs with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Disaster Capability Plan;
- (k) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;

- (l) access controls to any disaster capability sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (m) testing and management arrangements.

6 REVIEW AND AMENDMENT OF THE BCDC PLAN

6.1 The Supplier shall review the BCDC Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six (6) months;
- (b) within three (3) calendar months of the BCDC Plan (or any part) having been invoked pursuant to Paragraph 8; and
- (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) 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.

6.2 Each review of the BCDC Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDC 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 BCDC Plan or the last review of the BCDC 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 BCDC Plan. The review shall be completed by the Supplier within the period required by the BCDC Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDC 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 BCDC 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.

6.3 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 twenty (20) Working Days after the date on which they are first delivered to the Authority.

6.4 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 6.3 and this Paragraph 6.4 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.

6.5 The Supplier shall as soon as is reasonably practicable 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.

7 TESTING OF THE BCDC PLAN

7.1 The Supplier shall test the BCDC Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDC 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 BCDC Plan.

7.2 If the Authority requires an additional test of the BCDC 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 BCDC Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDC Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDC 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.

7.4 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.

- 7.5 The Supplier shall, within twenty (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 BCDC Plan (including the BCDC Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDC Plan) to remedy any failures in the BCDC 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.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDC Plan (including a test of the BCDC Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

8 INVOCATION OF THE BCDC PLAN

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDC Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDC Plan only with the prior consent of the Authority.

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 ten (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, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "Sensitive Claim"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

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.

SCHEDULE 9.1

STAFF TRANSFER

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“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 by the Supplier where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
“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: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“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;
“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;
“Schemes”	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 Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“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”	<p>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, such information as the Authority may reasonably request (subject to all applicable provisions of the GDPR), but including in an anonymised format:</p> <ul style="list-style-type: none">(a) their ages, dates of commencement of employment or engagement, gender and place of work;(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;(c) the identity of the employer or relevant contracting Party;(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit

schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“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

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 (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 (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

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 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;
 - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) 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

The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

1 PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.3 The Supplier and the Authority agree:
- (a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;
 - (b) notwithstanding sub-paragraph 1.1(a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - (c) that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:
 - (i) commits an irremediable breach of the Admission Agreement; or
 - (ii) commits a breach of the Admission Agreement 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 giving particulars of the breach and requiring the Supplier to remedy it.
- 1.4 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes, including without limitation MyCSP's on-boarding costs.

2 FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Supplier shall comply with 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.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any

Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

- (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any Fair Deal 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 Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes;
- (d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c), above.

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

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 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) 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

Notwithstanding any other provisions of this Part PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES, where in this Part PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES 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

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B

PENSIONS

1 PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- 1.3 The Supplier and the Authority agree:
- (a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;
 - (b) notwithstanding sub-paragraph 1.3 (a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - (c) that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:
 - (i) commits an irremediable breach of the Admission Agreement; or
 - (ii) commits a breach of the Admission Agreement 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 giving particulars of the breach and requiring the Supplier to remedy it.
- 1.4 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation MyCSP's on-boarding costs.

2 FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra

cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Supplier shall comply with 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.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either:
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any Fair Deal 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 Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes;
- (d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c), above.

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

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: Employment Exit Provisions

4 PRE-SERVICE TRANSFER OBLIGATIONS

4.1 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 GDPR, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

4.2 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).

4.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

4.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

4.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(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 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.

4.6 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 Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

4.7 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.

5 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 5.1 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.
- 5.2 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.
- 5.3 Subject to Paragraph 2.4, 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:

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- (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.

- 5.4 The indemnities in Paragraph 2.3 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.
- 5.5 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.
- 5.6 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.
- 5.7 If after the 15 Working Day period specified in Paragraph 2.5(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 Replacement Supplier and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 5.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 5.5 to 2.7, 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 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

5.9 The indemnity in Paragraph 2.8:

- (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 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

5.10 If any such person as is described in Paragraph 2.5 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 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

5.11 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.

- 5.12 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.
- 5.13 Subject to Paragraph 2.14, 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.

5.14 The indemnities in Paragraph 2.13 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: LIST OF NOTIFIED SUB-CONTRACTORS

N/a.

SCHEDULE 9.2

KEY PERSONNEL

HMRC

Role	Responsibilities	Contact Name, Title & Contact Details	
Senior Responsible Owner	Overall responsibility for delivery of the contract	Personal information redacted.	Personal information redacted.
Project Manager	Overall responsibility for the operational management of the project	Personal information redacted.	Personal information redacted.
Project Team	Working with supplier and stakeholders to ensure project objectives and deliverables are met	Personal information redacted.	Personal information redacted.
Commercial Contract Manager	Overall responsibility for the commercial management of the project	Personal information redacted.	Personal information redacted.

Dentsu

Role	Responsibilities	Contact Name, Title & Contact Details	
Commercial Manager	Overall responsibility for the commercial management of the project	Personal information redacted.	Personal information redacted.
Contract Manager	Overall responsibility for the operational management of the project	Personal information redacted.	Personal information redacted.

OFFICIAL - SENSITIVE - COMMERCIAL
HMRC Standard Goods and Services Model Contract v1.0

Mobilisation Manager	Overall responsibility for the mobilisation management of the project	Personal information redacted.	Personal information redacted.
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SCHEDULE 10

GUARANTEE

OFFICIAL - SENSITIVE - COMMERCIAL
HMRC Standard Goods and Services Model Contract v1.0

Dentsu Aegis Network Central Europe GmbH
- and -
The Commissioners for Her Majesty's Revenue and Customs

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the 29th day of October 2021

BETWEEN:

- (1) Dentsu Aegis Network Central Europe GmbH, a company incorporated under the laws of Germany, registered in Germany with number HRB 117267 at Frankfurt am Main whose principal office is at Speicherstrasse 53, 60327 Frankfurt am Main, Germany ("**Guarantor**"); in favour of
- (2) The Commissioners for Her Majesty's Revenue and Customs (HMRC) whose principal office is at 100 Parliament Street, Westminster, London SW1A 2BQ ("**Beneficiary**")

WHEREAS:

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) "**Guaranteed Agreement**" means the concessions contract for the provision of traceability systems made between the Beneficiary and the Supplier on 29/10/2021; and
 - (b) "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by 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;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that,

subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

- (a) Dentsu International, 10 Triton Street, London NW1 3BF
- (b) For the Attention of Office of the General Counsel

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee 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 Working Day after it was put into the post; or

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary 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, as the case may be.

- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligations shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, 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.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1 of subrogation and indemnity;
- 7.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.3 to prove in the liquidation or insolvency of the Supplier,
- only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- (a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
 - (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- 8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
- (a) exercise any rights it may have to be indemnified by the Supplier;
 - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - (c) claim any set-off or counterclaim against the Supplier.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated 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;
- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee 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.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Governing Law

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary 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 hereby irrevocably designates, appoints and empowers the Supplier or a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales at its registered office from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, the service of process or any other legal summons served in such way.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

Dentsu Aegis Network Central Europe GmbH acting by Thomas Wendt, Christiaan ter Welle, Oliver Dahmann and Isabel Boehmer (General Counsel).

Director

Director/Secretary