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# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 1**

### **DEFINITIONS**

## Definitions

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

<b>“Accounting Reference Date”</b>	means in each year the date to which the Supplier prepares its annual audited financial statements;
<b>“Acquired Rights Directive”</b>	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;
<b>“Affected Party”</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>“Affiliate”</b>	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;
<b>“Allowable Assumptions”</b>	the assumptions set out in <b>Error! Reference source not found.</b> of Schedule 14 ( <i>Charges and Invoicing</i> );
<b>“Allowable Price”</b>	in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula: $A - B$ where: (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and (b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there

is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

**“Allowable Price Adjustment”**

has the meaning given in Clause 35.8(c) (*Payments by the Supplier*);

**“Annual Contract Report”**

has the meaning given in Schedule 16 (*Financial Reports and Audit Rights*);

**“Annual Revenue”**

means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

**“Anticipated Contract Life Profit Margin”**

has the meaning given in Schedule 14 (*Charges and Invoicing*);

**“Approved Sub-Licensee”**

any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to a Central Government Body; and/or
- (c) any Body (including any private sector body) which performs or carries on any

of the functions and/or activities that previously had been performed and/or carried on by the Authority;

<b>“Assets”</b>	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
<b>“Associated Person”</b>	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
<b>“Associates”</b>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
<b>“Assurance”</b>	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
<b>“ATP Milestone”</b>	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
<b>“Audit”</b>	any exercise by the Authority of its Audit Rights pursuant to Clause 12 ( <i>Records, Reports, Audit and Open Book Data</i> ) and Schedule 16 ( <i>Financial Reports and Audit Rights</i> );
<b>“Audit Agents”</b>	<ul style="list-style-type: none"><li>(a) the Authority’s internal and external auditors;</li><li>(b) the Authority’s statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li></ul>

- (f) successors or assigns of any of the above;

**“Audit Rights”**

the audit and access rights referred to in Schedule 16 (*Financial Reports and Audit Rights*);

**“Authority Assets”**

the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment, or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

**“Authority Background IPRs”**

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;

but excluding IPRs owned by the Authority subsisting in the Authority Software;

**“Authority Cause”**

any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor, or any Supplier Personnel;

**“Authority Data”**

- (a) the data, text, drawings, diagrams, images, or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical, or tangible media, and which are:
  - (i) supplied to the Supplier by or on behalf of the Authority; and/or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Authority is the Data Controller;

**“Authority IT Strategy”**

the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

**“Authority Materials”**

the Authority Data together with any materials, documentation, information, programs, and codes supplied by the Authority to the Supplier, the IPRs in which:

(a) are owned or used by or on behalf of the Authority; and

(b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

**“Authority Premises”**

premises owned, controlled, or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

**“Authority Representative”**

the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

**“Authority Requirements”**

the requirements of the Authority set out in Schedules 0 (*Services Description*), Schedule 3 (*Performance Indicators*), Schedule 4 (*Standards*), Schedule 5 (*Security Management*), Schedule 6 (*Insurance Requirements*), Schedule 13 (*Implementation Plan*), Schedule 21 (*Reports and Records Provisions*), Schedule 22 (*Exit Management*) and Schedule 23 (*Service Continuity Plan and Corporate Resolution Planning*);

<b>“Authority Responsibilities”</b>	the responsibilities of the Authority specified in Schedule 7 ( <i>Authority Responsibilities</i> );
<b>“Authority Software”</b>	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
<b>“Authority System”</b>	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
<b>“Authority to Proceed” or “ATP”</b>	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;
<b>“Baseline Security Requirements”</b>	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 5 ( <i>Security Management</i> ), as updated from time to time by the Authority and notified to the Supplier;
<b>“Board”</b>	means the Supplier’s board of directors;
<b>“Board Confirmation”</b>	means the written confirmation from the Board in accordance with Paragraph 7 of Schedule 15 ( <i>Financial Distress</i> );
<b>“Breakage Costs Payment”</b>	has the meaning given in <b>Error! Reference source not found.</b> ( <i>Payments on Termination</i> );
<b>“Cabinet Office Markets and Suppliers Team”</b>	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

<b>“Central Government Body”</b>	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: <ul style="list-style-type: none"> <li>(a) Government Department;</li> <li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>(c) Non-Ministerial Department; or</li> <li>(d) Executive Agency;</li> </ul>
<b>“Certificate of Costs”</b>	has the meaning given in Schedule 14 ( <i>Charges and Invoicing</i> );
<b>“Change”</b>	any change to this Agreement;
<b>“Change Authorisation Note”</b>	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 19 ( <i>Change Control Procedure</i> );
<b>“Change Control Procedure”</b>	the procedure for changing this Agreement set out in Schedule 19 ( <i>Change Control Procedure</i> );
<b>“Change in Law”</b>	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
<b>“Change Request”</b>	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 19 ( <i>Change Control Procedure</i> );
<b>“Charges”</b>	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 14 ( <i>Charges and Invoicing</i> ), including any Milestone Payment or Service Charge;
<b>“Class 1 Transaction”</b>	has the meaning set out in the listing rules issued by the UK Listing Authority;
<b>“CNI”</b>	means Critical National Infrastructure;

**“Commercially Sensitive Information”**

the information listed in Schedule 9 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to:

- (a) the pricing of the Services;
- (b) details of the Supplier’s IPRs; and
- (c) the Supplier’s business and investment plans;

which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

**“Comparable Supply”**

the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

**“Compensation for Unacceptable KPI Failure”**

has the meaning given in Clause 7.4(a) (*Unacceptable KPI Failure*);

**“Compensation Payment”**

has the meaning given in **Error! Reference source not found.** (*Payments on Termination*);

**“Confidential Information”**

(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

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

(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s

attention or into the Recipient's possession in connection with this Agreement;

- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants, and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
  - (1) performance under this Agreement; or
  - (2) failure to pay any Sub-contractor as required pursuant to Clause

<b>“Contract Change”</b>	any change to this Agreement other than an Operational Change;
<b>“Contract Inception Report”</b>	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
<b>“Contract Finder”</b>	the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
<b>“Contract Year”</b>	<p>(a) a period of 12 months commencing on the Effective Date; or</p> <p>(b) thereafter a period of 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>
<b>“Control”</b>	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 <b>“Controls”</b> and <b>“Controlled”</b> shall be interpreted accordingly;
<b>“Controller”</b>	has the meaning given in the GDPR;
<b>“Corporate Change Event”</b>	means: <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p> <p>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</p> <p>(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion</p>

of the Authority, could have a material adverse effect on the Services;

- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver, or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

<b>“Corporate Resolution Planning Information”</b>	means, together, the: <ul style="list-style-type: none"> <li>(a) Group Structure Information and Resolution Commentary; and</li> <li>(b) UK Public Sector and CNI Contract Information;</li> </ul>
<b>“Costs”</b>	has the meaning given in Schedule 14 ( <i>Charges and Invoicing</i> );
<b>“CPP Milestone”</b>	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment
<b>“Critical National Infrastructure”</b>	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: <ul style="list-style-type: none"> <li>(a) major detrimental impact on the availability, integrity, or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or</li> <li>(b) significant impact on the national security, national defence, or the functioning of the UK;</li> </ul>
<b>“Critical Service Contract”</b>	means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part B to Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>“CRP Information”</b>	means the Corporate Resolution Planning Information;

<b>“CRTPA”</b>	the Contracts (Rights of Third Parties) Act 1999;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	<ul style="list-style-type: none"> <li>(a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time</li> <li>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</li> <li>(c) all applicable Law about the processing of personal data and privacy;</li> </ul>
<b>“Data Subject”</b>	has the meaning given in the DPA;
<b>“Data Subject Request”</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
<b>“Deductions”</b>	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement;
<b>“Default”</b>	<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"> <li>(a) in the case of the Authority, of its employees, servants, agents; or</li> <li>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</li> </ul>

in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

**“Defect”**

- (a) any error, damage, or defect in the manufacturing of a Deliverable; or
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;

**“Delay”**

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

**“Delay Deduction Period”**

the period of one hundred (100) days commencing on the relevant Milestone Date;

**“Delay Payments”**

the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 14 (*Charges and Invoicing*);

**“Deliverable”**

an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date

or at any other stage during the performance of this Agreement;

**“Dependent Parent Undertaking”**

means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;

**“Detailed Implementation Plan”**

the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (*Implementation Plan*);

**“Disclosing Party”**

has the meaning given in Clause 22.1 (*Confidentiality*);

**“Disclosing Party Group”**

- (a) where the Disclosing Party is the Supplier, the Supplier, and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Authority, the Authority, and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;

**“Dispute”**

any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**“Dispute Notice”**

a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

**“Dispute Resolution Procedure”**

the dispute resolution procedure set out in Schedule 20 (*Dispute Resolution Procedure*);

**“Documentation”**

descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

**“DOTAS”**

the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

**“DPA”**

the Data Protection Act 2018;

<b>“Due Diligence Information”</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
<b>“Effective Date”</b>	the date on which this Agreement is signed by both Parties;
<b>“EIRs”</b>	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;
<b>“Emergency Maintenance”</b>	ad hoc and unplanned maintenance provided by the Supplier where: <ul style="list-style-type: none"> <li>(a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</li> <li>(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;</li> </ul>
<b>“Employee Liabilities”</b>	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: <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> </ul>

- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**“Employment Regulations”** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**“Estimated Year 1 Charges”** the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;

**“Estimated Initial Service Charges”** the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;

**“Euro Compliant”** means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the

introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (a) be able to perform all such functions in any number of currencies and/or in euros;
- (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

**“Exit Day”**

shall have the meaning in the European Union (Withdrawal) Act 2018;

**“Exit Management”**

services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 22 (*Exit Management*);

<b>“Exit Plan”</b>	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 22 ( <i>Exit Management</i> );
<b>“Expedited Dispute Timetable”</b>	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 20 ( <i>Dispute Resolution Procedure</i> );
<b>“Expert”</b>	has the meaning given in Schedule 20 ( <i>Dispute Resolution Procedure</i> );
<b>“Expert Determination”</b>	the process described in Paragraph 6 of Schedule 20 ( <i>Dispute Resolution Procedure</i> );
<b>“Extension Period”</b>	a period of 1 + 1 years from the end of the Initial Term;
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 15 ( <i>Financial Distress</i> );
<b>“Financial Distress Remediation Plan”</b>	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;
<b>“Financial Model”</b>	has the meaning given in Schedule 16 ( <i>Financial Reports and Audit Rights</i> );
<b>“Financial Reports”</b>	has the meaning given in Schedule 16 ( <i>Financial Reports and Audit Rights</i> );
<b>“Financial Transparency Objectives”</b>	has the meaning given in Schedule 16 ( <i>Financial Reports and Audit Rights</i> );
<b>“FOIA”</b>	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;
<b>“Force Majeure Event”</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and

which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

<b>“Force Majeure Notice”</b>	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;
<b>“Former Supplier”</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“GDPR”</b>	The General Data Protection Regulation (EU) 2016/679;
<b>“General Anti-Abuse Rule”</b>	(a) the legislation in Part 5 of the Finance Act 2013; and  (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>“General Change in Law”</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>“Good Industry Practice”</b>	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;
<b>“Goods”</b>	has the meaning given in Clause 9.7 ( <i>Supply of Goods</i> );

<b>“Group Structure Information and Resolution Commentary”</b>	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>“Halifax Abuse Principle”</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“Health and Safety Policy”</b>	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;
<b>“HMRC”</b>	HM Revenue & Customs;
<b>“Impact Assessment”</b>	has the meaning given in Schedule 19 ( <i>Change Control Procedure</i> );
<b>“Implementation Plan”</b>	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 ( <i>Implementation Plan</i> )) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 ( <i>Implementation Plan</i> ) from time to time;
<b>“Implementation Services”</b>	the implementation services described as such in the Services Description;
<b>“Implementation Services Commencement Date”</b>	the date on which the Supplier is to commence provision of the first of the Services, being 01/04/2022;
<b>“Indemnified Person”</b>	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights

in Relevant IPRs in accordance with this Agreement;

**“Independent Control”**

where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;

**“Information”**

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

**“Initial Term”**

the period of **3 years** from and including the Effective Date;

**“Initial Upload Date”**

means the occurrence of an event detailed in Schedule 21 (*Reports and Records Provisions*) Annex 4 (*Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

**“Insolvency Event”**

with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
  - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
  - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to

- obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
  - (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
  - (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - (f) where that person is a company, a LLP or a partnership:
    - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
    - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an

	<p>administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>“Intellectual Property Rights” or “IPRs”</b>	<p>(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;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>“Intervention Cause”</b>	has the meaning given in Clause 30.1 ( <i>Remedial Adviser</i> );
<b>“Intervention Notice”</b>	has the meaning given in Clause 30.1 ( <i>Remedial Adviser</i> );

<b>“Intervention Period”</b>	has the meaning given in Clause 30.2(c) ( <i>Remedial Adviser</i> );
<b>“Intervention Trigger Event”</b>	<ul style="list-style-type: none"> <li>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</li> <li>(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;</li> <li>(c) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;</li> </ul>
<b>“IPRs Claim”</b>	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
<b>“IT”</b>	information and communications technology;
<b>“IT Environment”</b>	the Authority System and the Supplier System;
<b>“Joint Controllers”</b>	where two or more Controllers jointly determine the purposes and means of processing;
<b>“Key Milestone”</b>	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph <b>Error! Reference source not found.</b> of Part B of Schedule 14 ( <i>Charges and Invoicing</i> ) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;

<b>“Key Performance Indicator”</b>	the key performance indicators set out in Table 1 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Key Personnel”</b>	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 26 ( <i>Key Personnel</i> ) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 ( <i>Key Personnel</i> );
<b>“Key Roles”</b>	a role described as a Key Role in Schedule 26 ( <i>Key Personnel</i> ) and any additional roles added from time to time in accordance with Clause 14.4 ( <i>Key Personnel</i> );
<b>“Key Sub-contract”</b>	each Sub-contract with a Key Sub-contractor;
<b>“Key Sub-contractor”</b>	any Sub-contractor: <ul style="list-style-type: none"> <li>(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</li> <li>(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);</li> </ul>
<b>“Know-How”</b>	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;
<b>“KPI Failure”</b>	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
<b>“KPI Service Threshold”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Law”</b>	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the

	European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“LED”</b>	Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> );
<b>“Licensed Software”</b>	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
<b>“Losses”</b>	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;
<b>“Maintenance Schedule”</b>	shall have the meaning set out in Clause 9.4 ( <i>Maintenance</i> );
<b>“Malicious Software”</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code, or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>“Management Information”</b>	the management information specified in Schedule 3 ( <i>Performance Levels</i> ), Schedule 14 ( <i>Charges and Invoicing</i> ) and Schedule 18 ( <i>Governance</i> ) to be provided by the Supplier to the Authority;
<b>“Material KPI Failure”</b>	(a) a Serious KPI Failure; (b) a Severe KPI Failure; or

- (c) a failure by the Supplier to meet a KPI Service Threshold;
- “Material PI Failure”**
- (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or
  - (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;

**“Measurement Period”** in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);

**“Milestone”** an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

**“Milestone Adjustment Payment Amount”** in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:

$$A - B$$

where:

- (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and
- (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;

<b>“Milestone Adjustment Payment Notice”</b>	has the meaning given in Clause 35.7 ( <i>Payments by the Supplier</i> );
<b>“Milestone Date”</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>“Milestone Payment”</b>	a payment identified in Schedule 14 ( <i>Charges and Invoicing</i> ) to be made following the issue of a Milestone Achievement Certificate;
<b>“Milestone Retention”</b>	has the meaning given in Schedule 14 ( <i>Charges and Invoicing</i> );
<b>“Minor KPI Failure”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“month”</b>	a calendar month and <b>“monthly”</b> shall be interpreted accordingly;
<b>“Multi-Party Dispute Resolution Procedure”</b>	has the meaning given in Paragraph 9.1 of Schedule 20 ( <i>Dispute Resolution Procedure</i> );
<b>“Multi-Party Procedure Initiation Notice”</b>	has the meaning given in Paragraph 9.2 of Schedule 20 ( <i>Dispute Resolution Procedure</i> );
<b>“NCSC”</b>	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
<b>“New Releases”</b>	an item produced primarily to extend, alter, or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>“Non-trivial Customer Base”</b>	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
<b>“Non-retained Deliverables”</b>	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the

	relevant CPP Milestone(s) and which are not Retained Deliverables;
<b>“Notifiable Default”</b>	shall have the meaning given in Clause 28.1 ( <i>Rectification Plan Process</i> );
<b>“Object Code”</b>	software and/or data in machine-readable, compiled object code form;
<b>“Occasion of Tax Non-Compliance”</b>	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Open Book Data”</b>	has the meaning given in Schedule 16 ( <i>Financial Reports and Audit Rights</i> );
<b>“Open Source”</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>“Operating Environment”</b>	the Authority System and the Sites;

<b>“Operational Change”</b>	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> <li>(a) will not affect the Charges and will not result in any other costs to the Authority;</li> <li>(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;</li> <li>(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and</li> <li>(d) will not require a change to this Agreement;</li> </ul>
<b>“Operational Service Commencement Date”</b>	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none"> <li>(a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and</li> <li>(b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;</li> </ul>
<b>“Operational Services”</b>	<p>the operational services described as such in the Services Description;</p>
<b>“Optional Services”</b>	<p>the services described as such in 0 (<i>Services Description</i>) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (<i>Optional Services</i>);</p>
<b>“Optional Services Implementation Plan”</b>	<p>the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;</p>

<b>“Other Supplier”</b>	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
<b>“Outline Implementation Plan”</b>	the outline plan set out at Annex 1 of Schedule 13 ( <i>Implementation Plan</i> );
<b>“Parent Undertaking”</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>“Partial Termination”</b>	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 34.2(b) ( <i>Termination by the Authority</i> ) or 34.3(b) ( <i>Termination by the Supplier</i> ) or otherwise by mutual agreement by the Parties;
<b>“Parties” and “Party”</b>	have the meanings respectively given on page 1 of this Agreement;
<b>“Performance Failure”</b>	a KPI Failure or a PI Failure;
<b>“Performance Indicators”</b>	the Key Performance Indicators and the Subsidiary Performance Indicators;
<b>“Permitted Maintenance”</b>	has the meaning given in Clause 9.4 ( <i>Maintenance</i> );
<b>“Performance Monitoring Report”</b>	has the meaning given in Schedule 3 ( <i>Performance Levels</i> );
<b>“Personal Data”</b>	has the meaning given in the GDPR;
<b>“Personal Data Breach”</b>	has the meaning given in the GDPR;
<b>“PI Failure”</b>	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
<b>“PI Service Threshold”</b>	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Preceding Services”</b>	has the meaning given in Clause 5.2(b) ( <i>Standard of Services</i> );

<b>“Processor”</b>	has the meaning given to it under the GDPR;
<b>“Processor Personnel”</b>	means all directors, officers, employees, agents, consultants, and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
<b>“Programme Board”</b>	the body described in Paragraph 7 of Schedule 18 ( <i>Governance</i> );
<b>“Prohibited Act”</b>	<ul style="list-style-type: none"> <li>(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"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(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;</li> <li>(c) an offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or</li> </ul> </li> <li>(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;</li> </ul>

<b>“Protective Measures”</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
<b>“Project Specific IPRs”</b>	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
<b>“Public Sector Dependent Supplier”</b>	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
<b>“Public Sector and CNI Contract Information”</b>	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 3 of Part B of Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>“Publishable Performance Information”</b>	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
<b>“Quality Plans”</b>	has the meaning given in Clause 6.1 ( <i>Quality Plans</i> );

<b>“Quarter”</b>	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
<b>“Recipient”</b>	has the meaning given in Clause 22.1 ( <i>Confidentiality</i> );
<b>“Records”</b>	has the meaning given in Schedule 21 ( <i>Reports and Records Provisions</i> );
<b>“Rectification Plan”</b>	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
<b>“Rectification Plan Failure”</b>	<ul style="list-style-type: none"> <li>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 28.4 (<i>Submission of the draft Rectification Plan</i>) or 28.8 (<i>Agreement of the Rectification Plan</i>);</li> <li>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 28.7 (<i>Agreement of the Rectification Plan</i>);</li> <li>(c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> <li>(i) 30 Working Days of a notification made pursuant to Clause 28.2 (<i>Notification</i>); and</li> <li>(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;</li> </ul> </li> <li>(d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to</li> </ul>

	the Measurement Period in which the initial Material KPI Failure occurred;
	(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
	(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
<b>“Rectification Plan Process”</b>	the process set out in Clauses 28.4 ( <i>Submission of the draft Rectification Plan</i> ) to 28.9 ( <i>Agreement of the Rectification Plan</i> );
<b>“Registers”</b>	has the meaning given in Schedule 22 ( <i>Exit Management</i> );
<b>“Reimbursable Expenses”</b>	has the meaning given in Schedule 14 ( <i>Charges and Invoicing</i> );
<b>“Relevant Authority” or “Relevant Authorities”</b>	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
<b>“Relevant IPRs”</b>	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
<b>“Relevant Preceding Services”</b>	has the meaning given in Clause 5.2(b) ( <i>Standard of Services</i> );
<b>“Relevant Requirements”</b>	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;
<b>“Relevant Tax Authority”</b>	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relief Notice”</b>	has the meaning given in Clause 32.2 ( <i>Authority Cause</i> );
<b>“Remedial Adviser”</b>	the person appointed pursuant to Clause 30.2 ( <i>Remedial Adviser</i> );
<b>“Remedial Adviser Failure”</b>	has the meaning given in Clause 30.6 ( <i>Remedial Adviser</i> );
<b>“Replacement Services”</b>	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;
<b>“Replacement Supplier”</b>	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);
<b>“Request For Information”</b>	a Request for Information under the FOIA or the EIRs;
<b>“Required Action”</b>	has the meaning given in Clause 31.1(a) ( <i>Step-In Rights</i> );
<b>“Retained Deliverables”</b>	has the meaning given in Clause 35.8(b) ( <i>Payments by the Supplier</i> );
<b>“Risk Register”</b>	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 2 of Schedule 14 ( <i>Charges and Invoicing</i> );

<b>“Security Management Plan”</b>	the Supplier's security plan as attached as Annex 2 of Schedule 5 ( <i>Security Management</i> ) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 5 ( <i>Security Management</i> );
<b>“Serious KPI Failure”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Service Charges”</b>	the periodic payments made in accordance with Schedule 14 ( <i>Charges and Invoicing</i> ) in respect of the supply of the Operational Services;
<b>“Service Continuity Plan”</b>	any plan prepared pursuant to Paragraph 2 of Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> ) as may be amended from time to time;
<b>“Service Continuity Services”</b>	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>“Service Credits”</b>	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Schedule 3 ( <i>Performance Monitoring</i> )
<b>“Service Period”</b>	a calendar month, save that: <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul>
<b>“Service Points”</b>	in relation to a KPI Failure, the points that are set out against the relevant Key Performance

	Indicator in the fifth column of the table in Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Services”</b>	any and all of the services to be provided by the Supplier under this Agreement, including those set out in 0 ( <i>Services Description</i> );
<b>“Service Transfer Date”</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“Services Description”</b>	the services description set out in 0 ( <i>Services Description</i> );
<b>“Severe KPI Failure”</b>	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Sites”</b>	any premises (including the Authority Premises, the Supplier’s premises or third party premises): <ul style="list-style-type: none"> <li>(a) from, to or at which: <ul style="list-style-type: none"> <li>(i) the Services are (or are to be) provided; or</li> <li>(ii) the Supplier manages, organises, or otherwise directs the provision or the use of the Services; or</li> </ul> </li> <li>(b) where: <ul style="list-style-type: none"> <li>(i) any part of the Supplier System is situated; or</li> <li>(ii) any physical interface with the Authority System takes place;</li> </ul> </li> </ul>
<b>“SME”</b>	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;
<b>“Social Value”</b>	the social, economic, or environmental benefits set out in the Authority’s Requirements;
<b>“Software”</b>	Specially Written Software, Supplier Software and Third Party Software;

<b>“Software Supporting Materials”</b>	has the meaning given in Clause 17.1(b) ( <i>Specially Written Software and Project Specific IPRs</i> );
<b>“Source Code”</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information, and documentation necessary for the use, reproduction, maintenance, modification, and enhancement of such software;
<b>“Specially Written Software”</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
<b>“Specific Change in Law”</b>	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>“</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“Standards”</b>	the standards, policies and/or procedures identified in Schedule 4 ( <i>Standards</i> );
<b>“Step-In Notice”</b>	has the meaning given in Clause 31.1 ( <i>Step-In Rights</i> );
<b>“Step-In Trigger Event”</b>	<ul style="list-style-type: none"> <li>(a) any event falling within the definition of a Supplier Termination Event;</li> <li>(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;</li> <li>(c) the Authority considers that the circumstances constitute an emergency</li> </ul>

despite the Supplier not being in breach of its obligations under this Agreement;

- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 31 (*Step-In Rights*) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property, or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty;

<b>“Step-Out Date”</b>	has the meaning given in Clause 31.5(b) ( <i>Step-In Rights</i> );
<b>“Step-Out Notice”</b>	has the meaning given in Clause 31.5 ( <i>Step-In Rights</i> );
<b>“Step-Out Plan”</b>	has the meaning given in Clause 31.6 ( <i>Step-In Rights</i> );
<b>“Strategic Supplier”</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;
<b>“Sub-contract”</b>	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;
<b>“Sub-contractor”</b>	any third party with whom: <ul style="list-style-type: none"><li>(a) the Supplier enters into a Sub-contract; or</li><li>(b) a third party under (a) above enters into a Sub-contract,</li></ul> or the servants or agents of that third party;

<b>“Sub-processor”</b>	any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
<b>“Subsidiary Performance Indicator”</b>	the performance indicators set out in Table 2 of Part C of Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Subsidiary Undertaking”</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>“Successor Body”</b>	has the meaning given in Clause 37.4 ( <i>Assignment and Novation</i> );
<b>“Supplier Background IPRs”</b>	<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, implementing, or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<b>“Supplier COTS Background IPRs”</b>	<p>Any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
<b>“Supplier COTS Software”</b>	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this</p>

Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and

(b) has a Non-trivial Customer Base;

**“Supplier Equipment”**

the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased, or loaned from the Authority) for the provision of the Services;

**“Supplier Group”**

means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

**“Supplier Non-COTS Background IPRs”**

Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;

**“Supplier Non-COTS Software”**

Supplier Software that is not Supplier COTS Software;

**“Supplier Non-Performance”**

has the meaning given in Clause 32.1 (*Authority Cause*);

**“Supplier Personnel”**

all directors, officers, employees, agents, consultants, and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;

**“Supplier Profit”**

has the meaning given in Schedule 14 (*Charges and Invoicing*);

**“Supplier Profit Margin”**

has the meaning given in Schedule 14 (*Charges and Invoicing*);

**“Supplier Representative”**

the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives*);

**“Supplier Software”**

software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (*Software*);

<b>“Supplier Solution”</b>	the Supplier's solution for the Services set out in Schedule 8 ( <i>Supplier Solution</i> ) including any Annexes of that Schedule;
<b>“Supplier System”</b>	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
<b>“Supplier Termination Event”</b>	<ul style="list-style-type: none"> <li>(a) the Supplier’s level of performance constituting a Critical Performance Failure;</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 26.6(a) (<i>Financial and other Limits</i>);</li> <li>(d) a Remedial Adviser Failure;</li> <li>(e) a Rectification Plan Failure;</li> <li>(f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> <li>(i) Clause 19 (<i>IPRs Indemnity</i>);</li> <li>(ii) Clause 40.6(b) (<i>Prevention of Fraud and Bribery</i>); and/or</li> <li>(iii) Paragraph 6 of Schedule 15 (<i>Financial Distress</i>);</li> <li>(iv) Paragraph 12 of Part B to Schedule 23 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);</li> </ul> </li> <li>(g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i)</li> </ul>

- (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
  - (i) the Supplier committing a material Default under any of the following Clauses:
    - (i) Clause 5.5(j) (*Services*);
    - (ii) Clause 24 (*Protection of Personal Data*);
    - (iii) Clause 23 (*Transparency and Freedom of Information*);
    - (iv) Clause 22 (*Confidentiality*); and
    - (v) Clause 36 (*Compliance*); and/or

in respect of any security requirements set out in 0 (*Services Description*), Schedule 5 (*Security Management*) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 25 (*Staff Transfer*);
  - (j) an Insolvency Event occurring in respect of the Supplier;
  - (k) a change of Control of the Supplier unless:
    - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the

Authority was given notice of the Change of Control;

- (l) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (m) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either **Error! Reference source not found.** or **Error! Reference source not found.** of Schedule 25 (*Staff Transfer*);
- (n) 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;
- (o) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social, or labour law; or
- (p) in relation to Schedule 5 (*Security Requirements*):
  - (i) the Authority has issued two rejection notices in respect of the Security Management Plan under [Paragraph 4.5(b) (0)/ Paragraph **Error! Reference source not found. (Error! Reference source not found.)**];
  - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
  - (iii) Supplier COTS Software and Third Party COTS Software is not

	<p>within mainstream support unless the Authority has agreed in writing.</p> <p>(iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,</p> <p>(v) the Supplier fails to comply with the Incident Management Process.</p>
<b>“Supply Chain Transparency Report”</b>	means the report provided by the Supplier to the Authority in the form set out in Annex 5 of Schedule 21 ( <i>Reports and Records Provisions</i> );
<b>“Target Performance Level”</b>	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 3 ( <i>Performance Levels</i> );
<b>“Term”</b>	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
<b>“Termination Assistance Notice”</b>	has the meaning given in Paragraph 5 of Schedule 22 ( <i>Exit Management</i> );
<b>“Termination Assistance Period”</b>	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 22 ( <i>Exit Management</i> );
<b>“Termination Date”</b>	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;
<b>“Termination Notice”</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any

	part thereof) on a specified date and setting out the grounds for termination;
<b>“Termination Payment”</b>	the payment determined in accordance with <b>Error! Reference source not found.</b> ( <i>Payments on Termination</i> );
<b>“Termination Services”</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 22 ( <i>Exit Management</i> ), and any other services required pursuant to the Termination Assistance Notice;
<b>“Third Party Auditor”</b>	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 21 ( <i>Reports and Records Provisions</i> );
<b>“Third Party Beneficiary”</b>	has the meaning given in Clause 44.1 ( <i>Third Party Rights</i> );
<b>“Third Party COTS IPRs”</b>	Third Party IPRs that: <ul style="list-style-type: none"> <li>(a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and</li> <li>(b) has a Non-trivial Customer Base;</li> </ul>
<b>“Third Party COTS Software”</b>	Third Party Software (including open source software) that: <ul style="list-style-type: none"> <li>(a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and</li> <li>(b) has a Non-trivial Customer base;</li> </ul>
<b>“Third Party IPRs”</b>	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights

	owned by the third party subsisting in any Third Party Software;
<b>“Third Party Non-COTS IPRs”</b>	Third Party IPRs that are not Third Party COTS IPRs;
<b>“Third Party Non-COTS Software”</b>	Third Party Software that is not Third Party COTS Software;
<b>“Third Party Provisions”</b>	has the meaning given in Clause 44.1 ( <i>Third Party Rights</i> );
<b>“Third Party Software”</b>	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 ( <i>Software</i> );
<b>“Transferring Assets”</b>	has the meaning given in Paragraph 6.2(a) of Schedule 22 ( <i>Exit Management</i> );
<b>“Transferring Authority Employees”</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“Transferring Former Supplier Employees”</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“Transferring Supplier Employees”</b>	has the meaning given in Schedule 25 ( <i>Staff Transfer</i> );
<b>“Transparency Information”</b>	has the meaning given in Clause 23.1 ( <i>Transparency and Freedom of Information</i> );
<b>“UK”</b>	the United Kingdom;
<b>“UK Public Sector Business”</b>	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;

<b>“UK Public Sector / CNI Contract Information”</b>	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 3 of Part B of Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>“Unacceptable KPI Failure”</b>	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
<b>“Unconnected Sub-contract”</b>	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
<b>“Unconnected Sub-contractor”</b>	any third party with whom the Supplier enters into an Unconnected Sub-contract;
<b>“Updates”</b>	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>“Update Requirement”</b>	means the occurrence of an event detailed in Schedule 21 ( <i>Reports and Records Provisions</i> ) Annex 4 ( <i>Virtual Library</i> ) which requires the Supplier to update the relevant information hosted on the Virtual Library;
<b>“Upgrades”</b>	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>“Valid”</b>	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 23 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );

<b>“VAT”</b>	value added tax as provided for in the Value Added Tax Act 1994;
<b>“VCSE”</b>	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>“Virtual Library”</b>	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 21 ( <i>Reports and Records Provisions</i> ); and
<b>“Working Day”</b>	any day other than a Saturday, Sunday or public holiday in England and Wales.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 2

### SERVICES DESCRIPTION

## Services Description – The Specification

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

### 2 INTRODUCTION & BACKGROUND

#### UNIVERSAL SERVICES

2.1 Our vision for children and young people with Special Educational Needs and Disabilities (SEND) is the same as for all children and young people – that they achieve well in their early years, at school and beyond; they find employment where that's appropriate; and lead happy, healthy and fulfilled lives which they have choices and control over.

2.2 Despite the ambitious reforms introduced under the Children and Families Act 2014, key challenges remain in delivering SEND services in line with our vision. The Government is currently conducting a Review of the SEND system and will publish proposals for consultation in due course. Suppliers will be required to respond flexibly to recommendations made as part of this Review, along with other developments in cross-government policy and beyond, such as the new Ofsted and CQC Local Area SEND Inspection framework.

2.3 Through this procurement we are aiming to improve outcomes for children and young people with SEND, particularly in mainstream settings. This will be achieved through one contract which will provide SEND-specific Continuing Professional Development (CPD) and support the school and Further Education (FE) workforce to identify and meet a broad range of needs, including autism, earlier and more effectively, and to successfully prepare for transitions into adulthood, including into employment.

2.4 We know that with the right preparation and support, the majority of children and young people with SEND are capable of gaining sustainable paid employment. All professionals working with them should share that presumption, and should provide the career advice and support that helps children and young people to develop the skills and experience, and achieve the qualifications, that they need to succeed in their careers. Schools and FE settings need to provide good quality, varied curriculum, activities and support which develop the skills and provide experiences to drive positive transitions between education and employment, promoting independence, inclusion and maintaining a healthy lifestyle. High-quality teacher training helps teachers to meet the needs of all pupils and students, including those with SEND. However, we recognise that schools and FE settings may need further support to meet the needs of these learners, particularly in mainstream settings, where the large majority of those with SEN are educated.

2.5 This work supports DfE's Outcome Delivery Plan 2021-22, by:

**2.5.1** improving the skills pipeline and supporting people to work

- 2.5.2** levelling up education standards so that children and young people in every part of the country are prepared with the knowledge, skills, and qualifications they need, and
- 2.5.3** supporting the most disadvantaged and vulnerable children and young people through high-quality local services so that no one is left behind.
- 2.6 The contract is due to commence 1 April 2022 and expire March 2025 (an initial 36 months term), with two options to extend further 1 + 1 years. This is subject to budgetary approvals, there is a break clause at the end of the first year. If funding is not secured, the break clause will be enacted and the contract may be terminated on 31st March 2023. DfE reserves the right to terminate the procurement process at any stage prior to contract award. Continuation of the programme to the end of the contract will be solely at DfE's discretion and subject to having approval and further funding in place.
- 2.7 Bidders should be aware that DfE reserves the right to terminate, amend, scale up, or reduce the scope of any agreement should funding be withdrawn, changed or there is a significant change in government policy relating to the delivery of the programme and outputs required as part of this contract, by giving at least 3 months' notice. In addition, this procurement exercise, the service scope, and the award of the contract is subject to any change in Ministerial priorities.
- 2.8 We understand that it may not be possible for one contractor to provide all of the requirements in this specification, therefore we welcome bids from consortia as well as from individual organisations.
- 2.9 To assess the impact of this provision an independent evaluation of this contract will be procured separately. Any successful bidder will be required to co-operate with an independent evaluator, including sharing information as required.
- 2.10 We encourage bidders to offer work experience, placements, or other supported employment opportunities, such as Supported Internships, to children and young people with SEND.
- 2.11 We are also procuring other SEND contracts and would expect successful bidders to work together to ensure activities align.
- 2.12 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

### **3 SERVICES DESCRIPTION**

#### **THE SERVICE REQUIREMENT**

- 3.1 The contract for Universal Services presents an exciting opportunity to contribute to DfE's Outcomes, and to design, develop and deliver a SEND-specific CPD and support offer for the school and FE workforce.

- 3.2 The aim of this contract is to support the school and FE workforce, particularly in mainstream settings, to identify and meet a broad range of needs, including autism, earlier and more effectively, and to successfully prepare for transitions into adulthood, including into employment.
- 3.3 This support is key, as the majority of children and young people with SEND attend mainstream settings, and the percentages of pupils who receive SEN Support and pupils who have Education, Health and Care (EHC) plans are increasing (from 12.1% and 3.3% of pupils in January 2020 to 12.2% and 3.7% in January 2021 respectively).
- 3.4 This trend is also shown in the increase in numbers of children and young people identified with autism as their primary type of need, making up the largest cohort of pupils with SEND (30% of those with SEN with EHC plans). As of 2021, 1.8% of all pupils (excluding those in independent settings), and 1.4% of pupils within state-funded mainstream schools are identified with autistic spectrum disorder.
- 3.5 Equally, the latest data on FE and Skills participants (from 2018/19) shows a sizeable population of learners with SEN, but no EHC plan, in FE settings (356,000 or 17.2% of participants aged 19 and over and 198,000 or 23.1% of those under 19 self-declared a learning difficulty or disability). The numbers of young people with EHC plans receiving FE provision are also increasing (from over 64,000 to over 71,000 from January 2020 to 2021).
- 3.6 We expect this contract to reach at least 70% of education settings at each stage of education (school and FE) per year, with representation across all geographical areas in England, in order to deliver real change across the education system and improve the experiences of children and young people with SEND.
- 3.7 We encourage bidder innovation in how this could be delivered, including ways to ensure full geographical coverage and address areas and settings of highest need.
- 3.8 Our intention is that this contract will help achieve:
- 3.8.1** improved knowledge and confidence in the school and FE workforce to identify SEND and put in place effective support, particularly in mainstream settings; and
  - 3.8.2** improved outcomes for children and young people with SEND.
- 3.9 Bidders must commit to evaluating the impact of delivery to determine whether the activities are driving better outcomes and delivering value for money and set out possible evaluation proposals to support this. These could include (but will not be limited to): surveys of participant satisfaction; analysis of learning outcomes; improvements against the programme aims; and the commissioning of impact / case studies. This is distinct from the independent evaluation which will be procured separately.
- 3.9.1** This Invitation to Tender does not specify funding proportions for different elements of the contract as we want to encourage offers

that consider all services described as a whole and complementary package for the workforce. The supplier should ensure that the split of activities responds to the service requirements.

- 3.10 Further detail of our requirements is set out in Section 3 Programme Requirements.

## **4 PROGRAMME REQUIREMENTS**

- 4.1 The supplier will be responsible for the development and delivery of a SEND-specific CPD and support offer for the school and FE workforce, which will reach at least 70% of education settings at each stage of education (school and FE) per year, with representation across all geographical areas in England.
- 4.2 DfE does not intend to strictly specify how this should be delivered and wishes to encourage bidder innovation in designing and developing the programme. However, a successful bidder would need to show how they would ensure the offer meets the following broad requirements:
- 4.3 Activities should be designed and delivered using robust emerging and existing research to drive high-quality, evidence-based practice that embeds cultural change within the sector leadership and across whole settings. This should support the workforce to meet their duties under the Equality Act 2010 and the Children and Families Act 2014, and the vision set out in the SEND Code of Practice.
- 4.4 Activities should meet the differing needs of the following roles within the school and FE workforce across England, at all stages in their careers and in all setting types and phases, with a specific focus on mainstream settings:
  - 4.4.1 Headteachers, principals and other senior leaders
  - 4.4.2 Members of governing boards
  - 4.4.3 Teachers
  - 4.4.4 SENCOs/FE SEND leaders
  - 4.4.5 Teaching Assistants and other support staff
  - 4.4.6 Other staff employed by settings, e.g. receptionists, admin staff, health professionals, supervisors.
- 4.5 Activities should focus on CPD and build on the use of existing resources wherever possible. They should be developed and delivered in a manner that this audience can effectively engage with, i.e. are user-friendly, flexible and easily accessible at the point of need (digital where appropriate), with clear signposting of who they are suitable for.
- 4.6 Activities should align with reforms to teacher CPD (Initial Teacher Education and Training, the Early Career Framework, and the National Professional Qualifications), curriculum guidance for education recovery, the EdTech strategy, and the vision set out in the recently published All-Age Autism Strategy (all linked at Annex A).
- 4.7 A successful bidder would also need to show how they would deliver the following specific requirements set out in Table 1 – note that Requirements B and C should form part of the overall offer outlined in Requirement A:

Table 1: List of requirements

Requirement	Description
<p><b>A: Provide a SEND-specific CPD and support offer to enable the school and FE workforce to identify and meet a broad range of needs earlier and more effectively, particularly in mainstream settings</b></p>	<p>Design and develop a high quality, evidence-based SEND-specific CPD and support offer that meets the needs of the intended audience and supports the aims of the contract. Requirements B and C should form part of this overarching offer and be embedded within it but are listed separately to ensure these specific elements are addressed.</p> <p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ul style="list-style-type: none"> <li>• Design and develop a high quality, evidence-based SEND-specific CPD and support offer that meets the broad requirements outlined above. DfE encourages proposals that will: <ul style="list-style-type: none"> <li>○ develop a CPD and support offer using the latest, robust evidence on what works best for supporting children and young people with SEND and effecting sustained improvement in practice</li> <li>○ use national and regional data to inform the offer and address issues, areas, and settings of highest need, using sustainable models to embed cultural change</li> <li>○ provide innovative solutions to ensure the workforce can make the best use of specialists' knowledge, for example by sharing effective deployment models or working with specialists (such as Educational Psychologists, Speech and Language Therapists, Occupational Therapists etc.) to disseminate knowledge through CPD or other activities within the offer, using sustainable models to embed cultural change</li> <li>○ propose strategies to support the workforce to understand and support positive transitions between the key stages and between schools and the variety of FE settings, or other transitions (e.g. to a new setting mid-academic year)</li> <li>○ encourage and facilitate the sharing of best practice and the undertaking of peer reviews,</li> </ul> </li> </ul>

	<p>self-reviews, and similar activities between settings, including between schools and FE settings and between mainstream and specialist settings, using sustainable models to embed cultural change</p> <ul style="list-style-type: none"> <li>○ encourage and facilitate engagement between schools, FE settings, Local Authorities, local/national organisations, and businesses in developing and promoting joined-up support for learners with SEND, raising ambitions and providing clear routes of progression with a focus on employment</li> <li>○ include content that is aimed at addressing both the presenting needs of children and young people and educational needs presented by different conditions, including, autism sensory impairments, speech, communication, and language needs (non-exhaustive list) and those with co-occurring needs</li> <li>○ include content that is aimed at addressing the needs of children and young people with SEND who also have different needs, for example those with SEND who are, or have been, Children in Need (including those on Child in Need Plans, Child Protection Plans and Looked-after Children), as well as Care Leavers, or otherwise recognised as vulnerable, and have a range of different characteristics, e.g. age, ethnicity, gender</li> <li>○ include content that would meet needs emerging from the Covid-19 pandemic, for example to support children and young people who may not have had identified SEN previously but now have additional needs, who need further support to re-engage in education, or who have experienced trauma or have other wellbeing and mental health needs</li> <li>○ incorporate the views of children and young people with SEND (and their parents / carers), including involving those representing a broad range of condition-specific needs, including autism, and from diverse backgrounds</li> <li>○ incorporate the views of the school and FE workforce, sector specialists and other stakeholders, including other government departments, to test, shape, and potentially</li> </ul>
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	<p>pilot content to ensure the offer meets the needs of the intended audience and will achieve our aims. This includes ensuring the offer avoids duplication and complements existing training and support for the school and FE workforce</p> <ul style="list-style-type: none"> <li>○ design and deliver a cost-effective strategy for disseminating the resources produced and provide evidence of sustainable delivery models which consider longevity and can withstand variances in funding levels.</li> </ul>
<p><b>B: Provide specific activity to improve autism provision at every age and stage</b></p>	<p>DfE does not intend to mandate all components of the offer and wishes to encourage bidder innovation. However, the supplier will be required to design and develop specific activity focused on improving autism provision at every age and stage as part of the offer, without overshadowing other SEND conditions, but in recognition of the significant proportion of learners with SEND for whom autism is a primary need, and the specific challenges at whole-setting level that meeting these needs can present.</p> <p><b>Detailed requirements:</b></p> <p>In addition to the detailed requirements listed for Requirement A, the supplier will:</p> <ul style="list-style-type: none"> <li>● Design and develop specific activity to improve autism provision and understanding, by embedding autism as a priority within the sector leadership and promoting high quality, evidence-based practice within all school and FE settings, following the vision set out in the All-Age Autism Strategy (linked at Annex A). <ul style="list-style-type: none"> <li>○ Education leaders will be expected to embrace best-practice standards and frameworks to ensure this.</li> <li>○ The supplier will be required to match the ambition set out in the strategy, ensuring that the autism provision element of this contract is distinct.</li> <li>○ Through this contract, education settings should be equipped to ensure that all aspects of their provision, including, but not limited to, policies, routines, environment, curriculum, and pastoral support, are inclusive of autistic children and young people.</li> <li>○ Teachers and educational staff will better understand the specific needs of their autistic pupils and students, and are enabled to meet these needs effectively, with this reflected in autistic pupils' and students' school placement sustainability.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Ensure that support for the strengths and needs of autistic children and young people are integrated within the wider offer, including activity that is non-condition specific, preparation for adulthood activities, and activities covering a broad age range of pupils and students.</li> </ul>
<p><b>C: Provide specific activity to improve preparation for adulthood provision at every age and stage</b></p>	<p>DfE does not intend to mandate all components of the offer and wishes to encourage bidder innovation. However, the supplier will be required to design and develop specific activity focused on improving preparation for adulthood provision at every age and stage as part of the offer.</p>
	<p><b>Detailed requirements:</b></p> <p>In addition to the detailed requirements listed for Requirement A, the supplier will:</p> <ul style="list-style-type: none"> <li>• Design and develop specific activity to improve preparation for adulthood provision at every age and stage, by embedding this as a priority within the sector leadership and promoting high quality, evidence-based practice within school and FE settings. This should support of all four preparation for adulthood goals, helping children and young people to realise their ambitions in relation to: <ul style="list-style-type: none"> <li>○ employment and/or higher education – this includes exploring different employment options, such as support for becoming self-employed and help from supported employment agencies</li> <li>○ independent living – this means young people having choice, control and freedom over their lives and the support they have, their accommodation and living arrangements, including supported living and transportation</li> <li>○ participating in society, including having friends and supportive relationships, and participating in, and contributing to, the local community</li> <li>○ being as healthy as possible in adult life.</li> </ul> </li> </ul> <p>Provision should also bring together the school and FE workforce with other relevant partners, including parents and carers, local authorities, and specialists.</p>

	<ul style="list-style-type: none"> <li>• Develop and deliver specific activity to support the transition to adulthood, including a particular focus on employability. DfE encourages proposals which present strong and innovative means of engaging with Local Authorities, local/national employers, and businesses to promote peer support and best practice sharing and provide clear and well supported routes into employment, including but not limited to Supported Internships, Traineeships and Apprenticeships.</li> </ul>
<p><b>D: Effectively deliver the offer to the school and FE workforce</b></p>	<p>Deliver the offer in a way that will engage and meet the needs of the intended audience, and will reach at least 70% of education settings at each stage of education (school and FE) per year, with representation across all geographical areas in England.</p>
	<p><b>Detailed Requirements</b></p> <p>In conjunction with the detailed requirements listed for Requirement A, the supplier will:</p> <ul style="list-style-type: none"> <li>• Propose a clear and realistic delivery plan and a delivery strategy that demonstrate the capability and capacity to mobilise quickly and deliver at scale to reach at least 70% of education settings at each stage of education (school and FE) per year, with representation across all geographical areas in England. This should include strategies to overcome any potential barriers to engagement in the offer and to contribute towards long-term change. <ul style="list-style-type: none"> <li>○ Include critical dates, milestones, deadlines, and activities to be undertaken together with resources required to achieve the plan and which individuals will be responsible for delivering against the plan. This might include or cross-reference a resourcing and recruitment plan if required.</li> </ul> </li> <li>• DfE encourages proposals that will: <ul style="list-style-type: none"> <li>○ use national and regional data to inform delivery and propose innovative ways to identify, reach and engage areas and settings of the highest need, using sustainable models to embed cultural change</li> <li>○ propose innovative ways to identify, reach and engage settings rated as ‘Requires Improvement’ or are otherwise identified as having poor SEN provision, including in their autism and preparation for adulthood awareness and practice, using sustainable models to embed cultural change</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ encourage and facilitate the sharing of best practice and peer review or similar activities between schools and FE settings and between mainstream and specialist settings, using sustainable models to embed cultural change</li> <li>○ consider how activities can be delivered by digital means where appropriate, and ensure this is based on best practice of digital delivery for online workforce CPD and engagement is continually monitored.</li> <li>● Continue to develop and refine the structure and components to best meet user needs and achieve DfE’s objectives throughout the life of the programme, by putting in place arrangements to regularly elicit feedback from stakeholders and participants and using this to drive improvements to delivery and to assess the impact of activities. This includes activity to align to and respond to DfE’s developing policy priorities.</li> <li>● Develop and implement a communications strategy to engage the intended audiences, including appropriate messaging, clearly demonstrating what channels that can be used to ensure the maximum impact of low or no cost marketing activity, e.g. working with key sector influencers. Bidders are to be aware that any proposed communications or marketing spend may be subject to Cabinet Office controls. Please see section 6.9 ‘Communications - Cabinet Office Controls’ of Document 1 – ITT Process overview for further detail.</li> <li>● Ensure the offer is delivered in a consistent and coherent manner, and that Requirements B and C are fully embedded in the overall offer as set out in Requirement A.</li> <li>● Demonstrate plans to host any content produced either on existing bidder websites and platforms or on www.gov.uk; subject to DfE approval, implement the proposals subject to any modifications required as part of the approvals process or such alternative solution as may be required, and maintain any online presence for the duration of the term.</li> </ul>
<b>E: Governance and programme management</b>	<p>Have robust governance and programme management arrangements in place to ensure effective and timely delivery of the contract.</p>
	<p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ul style="list-style-type: none"> <li>● Have a clear leadership and governance structure in place that combines efficient decision</li> </ul>

	<p>making with accountability and transparency, and provide DfE with a copy of the same (and any revisions). This structure should ensure that the required elements of the contract are given appropriate focus and resource through the life of the contract, and that decisions or activities to be included in sub-contracting arrangements are aligned with the required outcomes specified (e.g. on autism and FE support).</p> <ul style="list-style-type: none"> <li>• Ensure there are sufficient staff with the right skills and expertise to manage the efficient and effective delivery of the programme, outlining the proposed staffing and management structure in an organisational hierarchy showing the leadership structure, clear areas of responsibility and lines of accountability. <ul style="list-style-type: none"> <li>○ This should include details of key operational and strategic posts, the rationale for these posts and the skills required to undertake those functions (with a CV for each key person attached as an annex using no more than one side of A4 paper, in no less than 12 point Arial font), for those already in place, or those who have been identified and have clear capacity to immediately deliver the contract. Where personnel are not already in place, evidence must be provided of the recruitment processes for those roles, and from what point in the contract the roles will be required.</li> <li>○ If bidding as a consortium, this should include the responsibilities of different consortium members, including who leads the consortium, and how they will work together and provide coordinated reporting to the department, including an effective approach to managing potential conflicts of interest and any confidentiality agreements that will be in place with consortium members. If applicable, this should also include details of any sub-contractors and provide clarity as to how sub-contracting arrangements and packages of work combine to deliver the required outcomes as specified.</li> <li>○ Provide evidence of commitment to developing and investing in skills, in performance of the contract, and in particular their commitment to the creation of apprenticeships under the contract.</li> </ul> </li> <li>• Commit to evaluating the impact of delivery to determine whether the activities are driving better outcomes and delivering value for money and set out possible evaluation proposals to support this. These could include (but will not be limited to): surveys of participant satisfaction; analysis</li> </ul>
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	<p>of learning outcomes; improvements against the programme aims; and the commissioning of impact / case studies. This is distinct from the independent evaluation which will be procured separately.</p> <ul style="list-style-type: none"> <li>• Explain what governance systems they will have in place to do the following: <ul style="list-style-type: none"> <li>○ Monitor key risks and issues (providing evidence of how potential problems are identified as early as possible so that corrective actions can be taken to keep delivery on track).</li> <li>○ Monitor finances/track contract spend against delivery</li> <li>○ Track progress against indicative key performance indicators (KPIs)</li> <li>○ Provide management information (MI).</li> </ul> </li> <li>• Ensure that day-to-day operational management and contract management of the programme, both at design and delivery stages, is of an excellent quality and is conducted professionally, against agreed ways of working and standards of behaviour, by building a collaborative working relationship between the Supplier and DfE. Provide a contract management plan to support this. The Supplier must: <ul style="list-style-type: none"> <li>○ Manage subcontracts with third party suppliers, including working with and overseeing third party delivery organisations as appropriate or necessary, and quality assure activity delivered through partners or subcontractors.</li> <li>○ Work with DfE to agree key delivery KPIs once the programme has been designed, including reaching agreement on design questions such as participant numbers.</li> <li>○ Develop, agree with DfE, and subsequently implement robust processes for gathering and disseminating insights to inform continuous improvement.</li> <li>○ Ensure Quality Assurance plans are in place for the programme delivery and any resources created, providing the DfE with information from Quality Assurance reports in a timely manner if requested.</li> <li>○ Share knowledge acquired during the contract term: <ul style="list-style-type: none"> <li>▪ With DfE to improve awareness of strategic approaches and system intelligence, including on (but not limited to) any identified potential refinements to the delivery approach;</li> </ul> </li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>▪ If so requested by DfE, with other suppliers delivering similar programmes on DfE's behalf; and</li> <li>▪ Subject to DfE approval or if so requested by DfE, with other internal and external stakeholders, including (but not limited to) within the context of programme meetings and through the medium of presentations linked to findings of the programme.</li> </ul> <ul style="list-style-type: none"> <li>○ Attend and prepare for service monitoring meetings with the department Contract Manager on a monthly basis, or as agreed with DfE</li> <li>○ Show evidence of arrangements for regular internal progress update meetings</li> <li>○ Ensure any proposed products and services follow government Accessibility Requirements and the government Technology Code of Practice and Service Standard.</li> <li>○ Ensure the Technical Requirements set out in Annex B and sections are 6.6 - 6.8 of Document 1 - ITT Process Overview are reviewed and adhered to.</li> </ul>
<p><b>F: Project management, reporting and security</b></p>	<p>Develop, implement, and progressively refine robust yet responsive project management and reporting arrangements to ensure timely and effective delivery, including arrangements to monitor risk, finances, track contract spend against delivery, and track progress against KPIs.</p>
	<p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ul style="list-style-type: none"> <li>• Provide an outline plan to highlight key project milestones.</li> <li>• Provide a detailed project plan (including set up/mobilisation) that clearly articulates how you propose to deliver the specification, outlining: <ul style="list-style-type: none"> <li>○ critical activities to be undertaken to achieve each milestone</li> <li>○ the resource required for each activity and if they work as a consortium which members of it (and stakeholders where appropriate) will lead to achieve it</li> <li>○ a step by step plan for establishing systems and processes to deliver the requirements</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Provide a risk register defining: <ul style="list-style-type: none"> <li>○ specific risks or issues in delivering the proposal</li> <li>○ mitigations and contingencies for any risks identified</li> </ul> </li> <li>• Obtain DfE approval for a plan of comprehensive corrective actions, mitigations, and specific timescales in the event of any slippage, in order to restore progress back to plan.</li> <li>• Collect and report management information (including, but not limited to, participation, e.g. participant / respondent data, usage / engagement statistics; performance data, e.g. user satisfaction levels, including qualitative feedback on events / interactions, impact on individual / setting provision; marketing activity and financial spend) to support effective project management and continuous improvement, and to supply to other relevant organisations, including DfE, the National Audit Office, and any appointed evaluation contractor. The supplier will: <ul style="list-style-type: none"> <li>○ Ensure any data or management information transferred to DfE or employers is done so in an agreed government secure method</li> <li>○ Provide to DfE all reasonable support and assistance in responding to any ad-hoc or urgent data requests to which Officials are required to respond as a consequence of legislative requirements or constitutional convention, including (but not limited to) requests under the Freedom of Information Act 2000 or the Data Protection Act 2018, requests from Ministers, and questions submitted by Members of Parliament; such support and assistance to be provided in a flexible and timely manner within the agreed timescales and at no additional cost to DfE</li> <li>○ Take appropriate action to ensure that at all times the collection and transfer of information complies with the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), including the inclusion of specific statements (on which DfE will advise) in a privacy notice to be issued to participants, and ensuring the secure storage and transfer of data.</li> <li>○ In the event that the services provided include digital delivery, register with and at all times remain compliant with the Cyber Essentials Scheme, including the requirements for</li> </ul> </li> </ul>
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	<p>basic technical protection from cyberattacks.</p> <ul style="list-style-type: none"> <li>• Provide a security plan that explains how departmental or personal data will be protected, including for any data that will be processed outside the UK</li> <li>• Ensure that there is a formal closure procedure and an exit strategy in place for handover of the system, if required, to be completed within three months of the contract start date, including: <ul style="list-style-type: none"> <li>○ Any necessary Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements. TUPE information for this tender is available upon request, please contact the commercial team through Jaggaer to request this.</li> <li>○ A clear summary of outputs (including participation), lessons learned and outstanding issues arising during the contract</li> <li>○ The methodology for transferring any data or products to DfE or another supplier.</li> <li>○ Consideration should be given to how any networks created can be sustained after the contract ends.</li> </ul> </li> </ul>
<p><b>G: KPIs</b></p>	<p>The supplier will be required to propose a measurable set of KPIs to be agreed with the DfE (please refer to 'Section 6: KPIs of this document for an example of the Department's suggested overarching list).</p> <p>The agreed KPIs are expected to be an evolving document that will be amended as appropriate through the contract lifetime, to reflect changes in the environment and developments in the contract itself.</p> <p><b>Detailed requirements:</b></p> <ul style="list-style-type: none"> <li>• The Supplier will be required to propose a clear set of ambitious and achievable KPIs which meet the requirements outlined in this Section 3, and: <ul style="list-style-type: none"> <li>○ Clearly outline the expected outcomes/outputs to be achieved each performance reporting year for the duration of the contract.</li> <li>○ Demonstrate commitment to meeting any and all KPIs proposed in their bid and agreed with DfE</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Demonstrate commitment to monitoring and reporting on progress towards meeting KPIs.</li> <li>○ Agree to put at risk a proportion of the annual delivery costs, which shall be agreed with DfE, against the non or under-achievement of the KPIs.</li> </ul>
<b>H: Costs and value for money</b>	<p>The supplier will be required to deliver the programme for a duration of 3 years within the approximate budget of up to £11.76 million (including VAT), and to monitor, report and review programme delivery costs through the life of the programme.</p> <p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ul style="list-style-type: none"> <li>● As a part of their bid complete Schedule 2 Annex A - Commercial Envelope: <ul style="list-style-type: none"> <li>○ providing a price against each category of spend (see Tab 2 of the Commercial Envelope) based on current expectations, set up, and running costs up to the value of this contract</li> <li>○ providing an explanation of the cost breakdown against each category of spend (See Tab 3 of the Commercial Envelope)</li> <li>○ clarifying who will receive travel and subsistence under their contract conditions and that they are outside of standard running costs.</li> </ul> </li> <li>● Deliver the programme for a duration of 3 years within the approximated budget of £11.76 million (including VAT), to reach at least 70% of education settings at each stage of education (school and FE) per year, with representation across all geographical areas in England, and offer the best value for money. The supplier will also: <ul style="list-style-type: none"> <li>○ show how the programme offers the best value for money, within the set budget, against the requirements set, showing rationale and clearly evidenced costs calculations including the costs of: <ul style="list-style-type: none"> <li>● engaging the sector</li> <li>● developing the offer</li> <li>● delivering the offer.</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>• Monitor and evaluate the programme delivery costs, and:<ul style="list-style-type: none"><li>○ present clear plans within their bid for how they will record and report where costs may increase/decrease and their potential impact on delivery</li><li>○ present clear plans to review running costs, delivery numbers and implement spend and delivery plan changes for the contract period.</li></ul></li><li>• Manage payment arrangements with third party suppliers.</li><li>• Prepare options about the longer term sustainability of the programme.</li></ul>
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# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 3**

### **PERFORMANCE LEVELS**

## Performance Levels

### 5 DEFINITIONS

5.1 In this Schedule, the following definitions shall apply:

<b>“End User”</b>	any person authorised by the Authority to use the IT Environment and/or the Services;
<b>“Non-Available”</b>	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
<b>“Performance Monitoring Report”</b>	has the meaning given in Paragraph 1.1(a) of Part B;
<b>“Performance Review Meeting”</b>	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 1.4 of Part B;
<b>“Repeat KPI Failure”</b>	has the meaning given in Paragraph <b>Error! Reference source not found.</b> of Part A;
<b>“Satisfaction Survey”</b>	has the meaning given in Paragraph 1.1.1 of Part <b>Error! Reference source not found.</b> of Annex 1;
<b>“Service Credits”</b>	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance Annex 1 of Part B, of this Schedule ( <i>Performance Levels</i> );
<b>“Service Period”</b>	For the purposes of reporting a service period will be classed as 1 month

## PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

### 1 PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Both Parties agree that that efficiencies in delivery should be identified throughout the term of the contract, notably in years 2 & 3, and KPI's will be reviewed annually to incorporate these efficiencies, covering, but not limited to:
  - (a) Increased activity or resource reach in terms of participants
  - (b) Increase output in terms of activity delivery
  - (c) Increased Satisfaction Levels
- 1.4 Service Credits shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs **Error! Reference source not found.**, **Error! Reference source not found.** and 2.

### 2 SERVICE CREDITS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Credits shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Credits shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.4.
- 2.3 Where there are KPI's linked to the evaluation of resources, that are not directly linked to payment for delivery of the resource, failure to meet these targets and the subsequent service credits will apply to the value attached to the resource that evaluation KPI is directly linked to.
- 2.4 The number of Service Credits that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1.
- 2.5 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

## **PART B: PERFORMANCE MONITORING**

### **1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

1.1 Within 5 Working Days of the end of each Service Period/month, the Supplier shall provide:

- (a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”)

#### **Performance Monitoring Report**

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

#### **Information in respect of the Service Period just ended**

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator (including Social Value), the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods as a secondary tab/document;
- (b) financial reporting in terms of actual monies spent against each strand of work or KPI;
- (c) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
- (d) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
- (e) a summary of all Performance Failures that occurred during the Service Period;
- (f) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (g) which Performance Failures remain outstanding and progress in resolving them;
- (h) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (i) the status of any outstanding Rectification Plan processes, including:
  - (i) whether or not a Rectification Plan has been agreed; and

- (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- (j) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (k) the number of Service credits awarded in respect of each KPI Failure;
- (l) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (m) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- (n) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (o) such other details as the Authority may reasonably require from time to time; and

**Information in respect of previous Service Periods**

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

**Information in respect of the next Quarter**

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

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

1.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier, timetable for meetings to be agreed with the DfE Contract Manager

- (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, including relevant Key Subcontractors, 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 and/or PI Failure.

## **2 PERFORMANCE RECORDS**

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

## **ANNEX 1: KEY PERFORMANCE INDICATORS, SUBSIDIARY PERFORMANCE INDICATORS AND SERVICE CREDITS**

### **PART C: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES**

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services are set out below.

Both parties agree that KPI's will be reviewed annually and efficiencies to be identified, as detailed in paragraph 1.3 of Part A of this Schedule (Performance Levels).

#### **1. Key Performance Indicators**

KPI reference no	Overarching/ activity KPI	KPI title	Reporting Frequency	What is being measured	Timescales to be met	Performance Target (no./ %)	Source of KPI measurement data (What data is used to measure the KPI; how it's validated; who provides it)
1	Overarching KPI	The school and FE workforce across all education settings in scope, and across all areas in England, engage in improving their practice in relation to supporting children and young people with SEND	Monthly	a) At least 70% of education settings at each stage of education (school and FE) are engaged, with representation across all geographical areas in England.	Annual	70% pa Schools - 16,506 FE - 163  Year 1 Q1- 10500 schools, 100 FE Q2- 11000 schools, 105 FE Q3 11500 schools, 110 FE Q4 12000 schools, 110 FE Year 2 Q1 12500 schools, 120 FE Q2 13500 schools, 125 FE Q3 13500 schools, 130 FE Q4 15000 schools, 140 FE Year 3 Q1 15000 schools, 145 FE Q2 15500 schools, 150 FE	Data on activities and engagement with further details to be provided on trends/needs/barriers with a breakdown per year by setting type, role type and region

				Q3 16000 schools, 155 FE Q4 16506 schools 163 FE	
Overarching KPI	Monthly	b) At least 80% of participants who actively engaged in professional development/training activities are from mainstream settings.	Annual	80% pa	Attendance data Engagement Data including a breakdown by setting type, role type and region
Overarching KPI	Monthly	c) At least 25% of participants who actively engaged in professional development/training activities are in a leadership role - including representation across middle, senior, or executive leadership in schools and FE.	Annual	25% pa	Attendance data Engagement Data including a breakdown by setting type, role type and region

Overarching satisfaction surveys	Quarterly	d) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities report an increase in levels of confidence in identifying and meeting needs	Annual	90%	Evaluation forms reporting on how participants who engaged with activities report an increase in levels of confidence in identifying and meeting needs. Evaluation reports 1-3 months after training to be provided against measure in column D. Data to including a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included.
Overarching satisfaction surveys	Quarterly	e) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities are satisfied with the quality of services.	Annual	90%	Data on entrance and exit surveys - Survey to be agreed Evaluation forms reporting on how participants who engaged with activities are

	Overarching satisfaction surveys					satisfied with the quality of services.
		Quarterly	f) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities report changing or improving their practice, the practice of others and/or the leadership of SEND e.g. in relation to attendance, admissions, placement sustainability (by end of contract).	Annual	90%	Evaluation forms reporting on how participants who engaged with activities report changing or improving their practice Evaluation reports 1-3 months after training to be provided against measure in column D. Data to include a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included. Please note this is applicable to every aspect of training

	Overarching satisfaction surveys		Quarterly	g) At least 90% of participants who responded to evaluation forms and were engaged with activities report that they have incorporated their learning into their own education practice or have influenced others to incorporate the learning into their practice.	Annual	90%	delivered under this contract.  Evaluation forms reporting on how participants who engaged with activities can report that they have incorporated their learning into their education practice. Evaluation reports 1-3 months after training to be provided against measure in column D. Data to including a breakdown by setting type, role type and region. Consideration for recognising long
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						term impact on practise and return on investment (ROI) should be included.
	Overarching satisfaction surveys	Quarterly	h) At least 90% of participants in a leadership role who responded to evaluation forms and were engaged in professional development/training activities report that they have embedded their learning across their setting (by end of contract).	Annual	90%	Evaluation forms reporting on how people in leadership roles have identified impact on practice in settings. Evaluation reports 1-3 months after training to be provided against measure in column D. Data to include a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included.

	Overarching satisfaction surveys					Please note this is applicable to every aspect of training delivered under this contract.
		Quarterly	i) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities relating to autism report changing or improving their autism practice and/or that of others in their setting (by end of contract).	Annual	90%	Evaluation forms reporting on how participants who engaged with activities relating to autism report changing or improving their autism practice. Evaluation reports 1-3 months after training to be provided against measure in column D. Data to include a breakdown by setting type, role type and region. Consideration for recognising long

						term impact on practise and ROI should be included.
	Overarching satisfaction surveys	Quarterly	j) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities relating to preparation for adulthood or where it has been embedded report having a clear understanding of how to support their learners with SEND in terms of preparation for employment, and understand how to help them develop and realise their ambitions (by end of contract).	Annual	90%	Evaluation forms reporting on how participants who engaged with activities relating to preparation for adulthood or where it has been embedded report having a clear understanding of how to support their learners with SEND in terms of preparation for employment, and understand how to help them develop and realise their ambitions both within their local context and on a

						national level. Evaluation reports 1-3 months after training to be provided against measure in column D. Data to include a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included.	
	Overarching satisfaction surveys		Quarterly	k) At least 90% of participants who responded to evaluation forms and were engaged in professional development/training activities relating to preparation for adulthood or where it has been embedded, report changing or improving their preparation for adulthood practice and/or that of setting (by end of contract).	Annual	90%	Evaluation forms reporting on how participants who engaged with activities relating to preparation for adulthood or where it has been embedded report changing or improving their preparation for adulthood practice. Evaluation reports 1-3 months after training to be

							provided against measure in column D. Data to include a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included.
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2	Activity based A1	Monthly	<p>a) Minimum of 20 online modules/units delivered across initial term of contract, with a minimum participant of 100 school + 25 FE delegates per unit (to note breakdown per year below).</p> <p>Y1  Q2: 3 units delivered  Q3: 5 units delivered  Full Year: 100 school + 25 FE delegates per unit  1,000 delegates for year</p> <p>Y2  Q1: 5 units delivered  Q2: 5 units delivered  Full Year: 100 school delegates + 25 FE per unit = 2,250 delegates for year  3,250 cumulative</p> <p>Y3  Q1: 2 units delivered  Full Year: 100 school + 25 FE delegates per unit = 2,250 delegates for year  5,750 cumulative  1 delegate is 1 person that has completed the unit</p>	Annual	<p>Minimum:</p> <p>Y1. 8 units &amp; 1000 delegates  Y2. 10 units &amp; 2250 delegates  Y3. 2 units 2500 delegates</p>	<p>Data on online modules: Active, Incomplete and Completed modules by participant. Assessment on the average length of completion and recognition of subject trends including a breakdown by setting type, role type and region</p>
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Activity based A2	Monthly	<p>b) Minimum number of live CPD events/webinars (embedding autism and PfA where relevant), with a minimum number of participants, delivered per year. Incorporating blended delivery e.g. digital and face to face.</p> <p>Webinars:  Y1 = 20 webinars, min 600 attendees  Q3: 6 webinars, 150 attendees  Q4: 10 webinars, 250 attendees  4 responsive webinars spread over the year, 200</p> <p>ETF sessions and Employer Spoke (ES) Events:  Y1: 27 sessions/events, min 1080 attendees  Q1: 3 ETF events, 120 attendees &amp; 1 ES event, 40 attendees  Q2: 3 ETF events, 120 attendees &amp; 1 ES event, 40 attendees  Q3: 7 ETF events, 280 attendees &amp; 3 ES events, 120 attendees  Q4: 7 ETF events, 280 attendees &amp; 2 ES event, 80</p>	Annual	<p>Webinars:  Y1 = 20 webinars, min 600 attendees  Y2 = 56 webinars, min 1500 attendees  Y3 = 64 webinars, min 1,700 attendees</p> <p>ETF Sessions and ES Events:  Y1: 27 sessions/events, min 1080 attendees  Y2: 61 sessions/events, min 2550 attendees  Y3: 61 sessions/events, min 2550 attendees</p>	<p>Access data  Attendance data  Engagement Data  Recognition of specific events and their take up including a breakdown by setting type, role type and region</p>
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			<p>attendees</p> <p>Y2 = 56 webinars, min 1500 attendees Q1: 16 webinars, 400 attendees Q3: 20 webinars, 500 attendees Q4: 16 webinars, 400 attendees; 4 responsive webinars spread over the year, 200 attendees 2,100 cumulative</p> <p>Y3 = 64 webinars, min 1,700 attendees Q1: 20 webinars, 500 attendees Q3: 20 webinars, 500 attendees</p>	<p>attendees</p> <p>Y2: 61 sessions/event s, min 2550 attendees Q1: 9 ETF events: 360 attendees &amp; 3 ES events, 120 attendees Q2: 3 ETF events: 230 attendees &amp; 1 ES event, 40 attendees Q3:15 ETF events, 600 attendees &amp; 6 ES events, 240 attendees Q4: 18 ETF events, 720 attendees &amp; 6 ES events, 240 attendees</p> <p>Y3: 61 sessions/event s, min 2550 attendees Q1 18 ETF events, 720</p>		
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<p>Q4: 20 webinars, 500 attendees; 4 responsive webinars spread over the year,200 attendees 3,400 cumulative</p>	<p>attendees &amp; 6 ES events, 240 attendees Q2: 3 ETF events: 230 attendees &amp; 1 ES event, 40 attendees Q3:15 ETF events, 600 attendees &amp; 6 ES events, 240 attendees Q4: 9 ETF events: 360 attendees &amp; 3 ES events, 120 attendees</p>
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Activity based A3 and A7	Monthly	<p>c) Minimum participants with sustained engagement in group-based activity per year. (Schools: PD Groups, AR for SEND, LS for SEND &amp; FE: Communities of Practice, as per breakdown below).</p> <p>Year 1: School - 130 &amp; FE* - 9  Year 2: School - 210 &amp; FE* - 21  Year 3: School - 290 &amp; FE* - 21</p> <p>*ETF will run Communities of Practice Y1 = 9, Y2 = 21 , Y3 = 21, with minimum participants of : Y1 135; Y2 315; Y3 315.</p> <p>AR for SEND: Y1 = 15 (1 group), Y2 = 30 (2 groups), Y3 = 45 (3 groups)</p> <p>LS for SEND: Y1 = 10, Y2 = 20, Y3 = 30</p>	Annual	Year 1 x 105 Year 2 x 222 Year 3 x 303 Communities of Practice: Y1 135 Y2 315 Y3 315	Attendance data Engagement Data including a breakdown by setting type, role type and region
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Activity based A4	Quarterly	<p>d) Minimum 27 peers reviews for SEND per year delivered across ETF's three Centres of Excellence (to note breakdown per year below).</p> <p>Y1: 27 colleges total  Q1: 3 reviews  Q2: 3 reviews  Q3: 9 reviews  Q4: 12 reviews</p> <p>Y2: 27 colleges total  Q1: 9 reviews  Q2: 3 reviews  Q3: 6 reviews  Q4: 9 reviews</p> <p>80 schools receive PfAEY training and support (budget for RSL time) to review own provision</p> <p>Y3: 27 colleges total  Q1: 9 reviews  Q2: 3 reviews  Q3: 9 reviews  Q4: 6 reviews</p>	Annual	<p>27 College Review pa</p> <p>80 schools split across 2 years  Y2 = 80 schools PfAEY training  Y3 - working with same schools - Train the Trainer and support them to review other schools (building in sustainability)</p>	<p>Engagement Data including a breakdown by setting type, role type and region  Evaluation forms reporting on how participants who engaged with activities report an increase in levels of confidence in identifying and meeting needs.</p>
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Activity based A5	Quarterly	<p>e) Reach minimum of 16 leaders per year with minimum of 6 peer mentoring sessions per leader per year  Q2: 16 leaders x 2 sessions each  Q3: 16 leaders x 2 sessions each  Q4: 16 leaders x 2 sessions each</p>	Annual	16 leaders pa with 6 sessions per leader pa	Attendance data Engagement Data including a breakdown by setting type, role type and region
Activity based A5	Annual	<p>f) 10 case studies demonstrating how leaders from RI schools/FE (for SEND) who engaged with activities have improved outcomes for CYP with SEND.</p> <p>Case studies will include pre- and post-data, either or both qualitative and quantitative. Where appropriate, data will be reviewed and included at 6month/1 year intervals</p>	End of Contract		Case studies demonstrate how leaders from RI schools/FE (for SEND) have improved outcomes for CYP with SEND. Data to including a breakdown by setting type, role type and region. Consideration for recognising long term impact on practise and ROI should be included.

Activity based A9 Community Network for SEND	Quarterly	g) 27 events per year within the offer that involve local and national employers in co-production. (3 national events per year and 24 (3 x 8) regional events)	Annual	3 national events & 24 (3 x 8) regional events per year.  9 sessions per quarter in Q2, Q3, Q4 - i.e., 1 national session + 3 local sessions (1 per region) per quarter.	Case Studies of co-production activities incorporating the impact, audience, participation, and future developments
	Quarterly	h) At least 20,000 education staff (of which at least 1000 are head teachers or leaders and 20% are FE staff) trained in autism awareness and understanding per year to align with the ambitions set out in the All-Age Autism Strategy. This level of participation can be achieved through innovative delivery models, such as direct or indirect (e.g., training the trainer) training models.	Annual	20000 annually 5000 per quarter 20% (4000 will be in FE).	Regular data on activities and engagement with further details to be provided on trends/needs/barriers with a breakdown per year by setting type, role type and region
Activity-autism					

	Specific-autism		Quarterly	<p>i) Minimum number of downloads per year of autism education resources to show engagement in products and information dissemination, as below:</p> <p>1500 downloads of the AET Schools Standards Framework; 1500 downloads of the School Competency Frameworks; 800 downloads of the Post-16 Standards Framework and 800 downloads of the Post-16 Competency Framework</p>	Annual	1500 downloads of the AET Schools Standards Framework; 1500 downloads of the School Competency Frameworks; 800 downloads of the Post-16 Standards Framework and 800 downloads of the Post-16 Competency Framework	Regular data on activities and engagement with further details to be provided on trends/needs/barriers with a breakdown per year by setting type, role type and region
3	Overarching case studies	Activities have a demonstrable impact on the quality of provision for children and young people with SEND	Quarterly	a) At least 10 case studies produced by the end of the contract demonstrating how participants' learning has affected their provision within their setting and had an impact on children and young people with SEND (including a minimum of 2 participants in leadership roles and from mainstream settings). Case studies will include pre- and post-data, either or both qualitative and/or	End of Contract	10	Case studies demonstrate how participants' learning has affected their provision within their setting and had an impact on children and young people with SEND. Consideration for recognising long term impact on

				quantitative. Where appropriate, data will be included for 6 monthly/1 yearly intervals.		practise and ROI should be included.
	Case study-autism	Activities have a demonstrable impact on the quality of autism provision	Quarterly	b) At least 10 case studies produced by the end of the contract demonstrating how participants' learning has affected their autism provision within their setting and had an impact on children and young people with SEND (including minimum numbers 2 of participants in leadership roles and from mainstream settings)	End of Contract	Case studies demonstrate how participants' learning has affected their autism provision within their setting and had an impact on children and young people with SEND. Consideration for recognising long term impact on practise and ROI should be included.

	Case study-PfA	Activities have a demonstrable impact on the quality of preparation for adulthood provision	Quarterly	c) At least 10 case studies produced by the end of the contract demonstrating how participants' learning has affected their preparation for adulthood provision within their setting and had an impact on children and young people with SEND (including minimum numbers of participants in leadership roles and from mainstream settings)	End of Contract	10	Case studies demonstrate how participants' learning has affected their preparation for adulthood provision within their setting and had an impact on children and young people with SEND. Consideration for recognising long term impact on practise and ROI should be included.
4	Overarching	Support for the physical and mental health of people affected by COVID-19, including reducing the demand on health and care services.	Annual	90% of companies within the supply chain have implemented the 6 standards in the Mental Health at Work commitment	Annual	90%	Number of companies in the supply chain under the contract to have implemented the 6 standards in the Mental Health at Work commitment

	<p>Support for organisations and businesses to manage and recover from the impacts of COVID-19, including where new ways of working are needed to deliver services.</p> <p>Improvements to workplace conditions that support the COVID-19 recovery effort including effective</p>					
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		social distancing, remote working, and sustainable travel solutions.				
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**PART D: SERVICE CREDITS**

<b>Service Credit Mechanism</b>	<b>Per Service / Reporting Period – 1 month (Service credit deduction applies to the period of reporting where the performance failure occurred).</b>
<b>1 x Service Level/KPI missed = 1 Service Credit</b>	<b>0.5% of Charges</b>
<b>2 x Service Levels/KPI's missed = 2 Service Credits</b>	<b>1% of Charges</b>
<b>3 x Service Levels/KPI's missed = 3 Service Credits</b>	<b>1.5% of Charges</b>
<b>4 x Service Levels/KPI's missed = 4 Service Credits</b>	<b>2.0% of Charges</b>
<b>5 x Service Level/KPI's missed = 5 Service Credits</b>	<b>2.5% of Charges</b>
<b>6 x Service Levels/KPI's missed = 6 Service Credits</b>	<b>3.0% of Charges</b>
<b>7 x Service Levels/KPI's missed = 7 Service Credits</b>	<b>3.5% of Charges</b>
<b>8 x Service Levels/KPI's missed = 8 Service credits</b>	<b>4.0% of Charges</b>

## **1 SATISFACTION SURVEYS**

- 1.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Monthly Contract Management Report. The subject matter of Satisfaction Surveys may include:
- (a) the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
  - (b) other suggestions for improvements to the Services.
- 1.2 All contractor and subcontractors providing a service under this contract will clearly inform participants that as part of the DfE’s commitment to continuously improve the services, you may be invited to share your experience.
- 1.3 The Authority shall reflect in the monthly performance meetings any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

## **2 VIRTUAL LIBRARY COMPLETENESS**

- 2.1 The Virtual Library shall be complete where all of the information required under Schedule 21 (*Reports and Records Provisions*) Annex 4 (*Virtual Library*) has been uploaded to the Virtual Library in accordance with Paragraph 11 of that Schedule.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 4

### STANDARDS

## Standards

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

**“Standards Hub”** the Government’s open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>; and

**“Suggested Challenge”** a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

### 2 GENERAL

2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.

2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

### 3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

### 4 OPEN DATA STANDARDS & STANDARDS HUB

4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data, and document formats in the IT Environment.

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested

Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

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

## **5 TECHNOLOGY ARCHITECTURE STANDARDS**

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

## **6 ACCESSIBLE DIGITAL STANDARDS**

- 6.1 The Supplier shall comply with (or with equivalents to):
- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and

## **7 SERVICE MANAGEMENT SOFTWARE & STANDARDS**

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, where applicable including the following and/or demonstrating equivalent measures:
- (b) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
  - (c) ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.
- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level," then this shall be deemed acceptable.

## 8 ENVIRONMENTAL REQUIREMENTS

8.1 The Supplier shall comply with the environmental requirements set out in the Annex to this Schedule.

## 9 HARDWARE SAFETY STANDARDS

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
  - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
  - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
  - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

## ANNEX 1: ENVIRONMENTAL REQUIREMENTS

### 1. DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

**“Permitted Item”** means those items which are permissible under this Agreement to the extent set out in Table B of this Annex

**“Prohibited Items”** means those items which are not permissible under this Agreement as set out at Table A of this Annex

**“Sustainability Reports”**

written reports to be completed by the Supplier containing the information outlined in Table C of this Annex

**“Waste Hierarchy”**

means prioritisation of waste management in the following order of preference:

- (c) Prevention – by using less material in design and manufacture. Keeping products for longer;
- (d) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
- (e) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
- (f) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat, and power) and materials from waste; some backfilling; and
- (g) Disposal - Landfill and incineration without energy recovery.

**1. ENVIRONMENTAL REQUIREMENTS**

1.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.

1.2 In performing its obligations under the Agreement the Supplier shall to the reasonable satisfaction of the Authority:

- (a) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority’s reasonable questions;
- (b) prioritise waste management in accordance with the Waste Hierarchy;
- (c) be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
- (d) ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;

- (e) inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
  - (f) minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
  - (g) reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 1.3 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
- 1.4 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 1.5 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:
- 1.5.1.1 it is a Permitted Item; or
  - 1.5.1.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 1.6 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

**TABLE A – Prohibited Items**

<p><b>The following consumer single use plastics are Prohibited Items:</b></p>	<p><b>Catering</b></p> <ul style="list-style-type: none"> <li>a. Single use sachets e.g. coffee pods, sauce sachets, milk sachets</li> <li>b. Take away cutlery</li> <li>c. Take away boxes and plates</li> <li>d. Cups made wholly or partially of plastic</li> <li>e. Straws</li> <li>f. Stirrers</li> <li>g. Water bottles</li> </ul>
	<p><b>Facilities</b></p> <ul style="list-style-type: none"> <li>a. Single use containers e.g. hand soap, cleaning products</li> <li>b. Wipes containing plastic</li> </ul>
	<p><b>Office Supplies</b></p> <ul style="list-style-type: none"> <li>a. Plastic envelopes</li> <li>b. Plastic wrapping for brochures</li> <li>c. Paper or card which is bleached with chlorine</li> </ul>
	<p><b>Packaging</b></p> <ul style="list-style-type: none"> <li>a. Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products.</li> <li>b. Single use carrier bags</li> </ul>

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 5**

### **SECURITY MANAGEMENT**

## PART A: SECURITY ASSURANCE

### 1 Definitions

#### 1.1 In this Schedule:

<b>“Anti-Malicious Software”</b>	means software that scans for and identifies possible Malicious Software in the IT Environment;
<b>“Breach of Security”</b>	(a) an event that results, or could result, in: (b) any unauthorised access to or use of the Authority Data, the Services and/or the Information Management System; and/or (c) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement;
<b>“Certification Requirements”</b>	means the information security requirements set out in Paragraph 6;
<b>“CHECK Service Provider”</b>	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
<b>“CREST Service Provider”</b>	means a company with a SOC Accreditation from CREST International;
<b>“Cyber Essentials”</b>	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
<b>“Cyber Essentials Scheme”</b>	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
<b>“Incident Management Process”</b>	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Authority Data, the Authority, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4

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**“Information Assurance Assessment”**

means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in **Error! Reference source not found.**;

**“Information Management System”**

means

- (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Authority Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes, and resources);

**“Information Security Approval Statement”**

means a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:

- (a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;
- (b) the Authority has accepted the residual risks; and
- (c) the Supplier may use the Information Management System to Process Authority Data;

**“IT Health Check”**

has the meaning given in Paragraph 7.1;

**“Personal Data Processing Statement”**

means a document setting out:

- (a) the types of Personal Data which the Supplier and/or its Sub-contractors

Processes or will Process under this Agreement;

- (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Agreement;
- (c) the nature and purpose of such Processing;
- (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Agreement; and
- (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Agreement against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;

**“Process”**

means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**“Required Changes Register”**

mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;

**“Risk Register”**

is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Authority for approval in accordance with Paragraph 4;

**“Security Management Plan”**

means the document prepared by the Supplier using the template in **Error! Reference source not found.**, comprising:

- (a) the Information Assurance Assessment;
- (b) the Personal Data Processing Statement;
- (c) the Required Changes Register; and
- (d) the Incident Management Process;

**Special Category Personal Data** means the categories of Personal Data set out in article 9(1) of the GDPR;

## 2 Introduction

2.1 This Schedule sets out:

- (a) the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Agreement to ensure the security of the Authority Data and the Information Management System;
- (b) the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Authority Data;
- (c) The security requirements in 0, with which the Supplier must comply;
- (d) the tests which the Supplier shall conduct on the Information Management System during the Term;
- (e) the Supplier's obligations to:
  - (i) return or destroy Authority Data on the expiry or earlier termination of this Agreement; and
  - (ii) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and
  - (iii) report Breaches of Security to the Authority.

## 3 Principles of Security

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

- (a) the Sites;
- (b) the IT Environment;
- (c) the Information Management System; and
- (d) the Services.

- 3.2 Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier implements to ensure the security of the Authority Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
- (a) the security, confidentiality, integrity, and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors; and
  - (b) the security of the Information Management System.
- 3.3 The Supplier shall:
- (a) comply with the security requirements in 0; and
  - (b) ensure that each Sub-contractor that Processes Authority Data complies with the Sub-contractor Security Requirements.
- 3.4 The Supplier shall provide the Authority with access to Supplier Personnel responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

#### **4 Information Security Approval Statement**

- 4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Services Commencement Date.
- 4.2 The Supplier may not use the Information Management System to Process Authority Data unless and until:
- (a) the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and
  - (b) the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.
- 4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Agreement in order to ensure the security of the Authority Data and the Information Management System.
- 4.4 At the Authorities request, the Supplier shall prepare and submit within 30 Working Days, the Security Management Plan, which comprises:
- (a) an Information Assurance Assessment;
  - (b) the Required Changes Register;
  - (c) the Personal Data Processing Statement; and

- (d) the Incident Management Process.
- 4.5 The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:
- (a) an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data; or
  - (b) a rejection notice, which shall set out the Authority's reasons for rejecting the Security Management Plan.
- 4.6 If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within 10 Working Days or such other timescale as agreed with the Authority.
- 4.7 The Authority may require, and the Supplier shall provide the Authority and its authorised representatives with:
- (a) access to the Supplier Personnel;
  - (b) access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Agreement; and
  - (c) such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

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

## **5 Compliance Reviews**

- 5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Authority, at least once each year and as required by this Paragraph.
- 5.2 The Supplier shall notify the Authority within 2 Working Days after becoming aware of:
- (a) a significant change to the components or architecture of the Information Management System;
  - (b) a new risk to the components or architecture of the Information Management System;

- (c) a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of 0 to this Schedule;
- (d) a change in the threat profile;
- (e) a significant change to any risk component;
- (f) a significant change in the quantity of Personal Data held within the Service;
- (g) a proposal to change any of the Sites from which any part of the Services are provided; and/or
- (h) an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

5.3 Within 10 Working Days of such notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.

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

## **6 Certification Requirements**

6.1 The Supplier shall be certified as compliant with:

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

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

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

- (a) securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- (b) are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority.

6.3 The Supplier shall provide the Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6

before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Authority Data.

- 6.4 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:
- (a) immediately ceases using the Authority Data; and
  - (b) procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this Paragraph.
  - (c) The Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

## 7 Security Testing

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

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

7.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in 0 to this Schedule.

## **8 Security Monitoring and Reporting**

8.1 The Supplier shall:

- (a) monitor the delivery of assurance activities;
- (b) maintain and update the Security Management Plan in accordance with Paragraph 5;
- (c) agree a document which presents the residual security risks to inform the Authority's decision to give approval to the Supplier to Process, store and transit the Authority Data;
- (d) monitor security risk impacting upon the operation of the Service;
- (e) report Breaches of Security in accordance with the approved Incident Management Process;
- (f) agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within 20 Working Days of Effective Date.

## **9 Malicious Software**

9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:

- (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

(b) by the Authority, in any other circumstance.

## **10 Breach of Security**

10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.

10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

(a) Immediately take all reasonable steps necessary to:

- (i) minimise the extent of actual or potential harm caused by such Breach of Security;
- (ii) remedy such Breach of Security to the extent possible;
- (iii) apply a tested mitigation against any such Breach of Security; and
- (iv) prevent a further Breach of Security in the future which exploits the same root cause failure;

(b) as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Agreement, then such remedial action shall be completed at no additional cost to the Authority.

## **ANNEX 1: SECURITY REQUIREMENTS**

### **1 Security Classification of Information**

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

### **2 End User Devices**

- 2.1 The Supplier shall ensure that any Authority Data which resides on a mobile, removable, or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Supplier shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>.

### **3 Networking**

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

### **4 Personnel Security**

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data or data which, if it were Authority Data, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or

provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

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

## **5 Identity, Authentication and Access Control**

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

## **6 Data Destruction or Deletion**

- 6.1 The Supplier shall:
  - (a) prior to securely sanitising any Authority Data or when requested the Supplier shall provide the Government with all Authority Data in an agreed open format;

- (b) have documented processes to ensure the availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority;
- (d) securely destroy in a manner agreed with the Authority all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as agreed by the Authority; and
- (e) implement processes which address the CPNI and NCSC guidance on secure sanitisation.

## **7 Audit and Protective Monitoring**

- 7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data.
- 7.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 7.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Security Management Plan.

## **8 Location of Authority Data**

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

## **9 Vulnerabilities and Corrective Action**

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
  - (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and

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

## 10 Secure Architecture

- 10.1 The Supplier shall design the Information Management System in accordance with:
- (a) the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;

- (b) the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- (c) the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
  - (i) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
  - (ii) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
  - (iii) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
  - (iv) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
  - (v) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
  - (vi) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;
  - (vii) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
  - (viii) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
  - (ix) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the

tools available for the Authority to securely manage the Authority's use of the Service;

- (x) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (xi) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (xii) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (xiii) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors; and
- (xiv) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

## **ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS**

### **1 Application of Annex**

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

### **2 Designing and managing secure solutions**

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

### **3 Data Processing, Storage, Management and Destruction**

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

### **4 Personnel Security**

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

identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

- 4.2 The Sub-contractor must, if the Authority requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Authority Data containing Personal Data above certain volumes specified by the Authority, or containing Special Category Personal Data.
- 4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

## **5 End User Devices**

- 5.1 The Sub-contractor shall ensure that any Authority Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.
- 5.2 The Supplier shall ensure that any device used to Process Authority Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

## **6 Networking**

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

## **7 Patching and Vulnerability Scanning**

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

## **8 Third Party Sub-contractors**

- 8.1 The Sub-contractor must not transmit or disseminate the Authority Data to any other person unless specifically authorised by the Authority. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Authority Data where the licence terms of that

software purport to grant the licensor rights to Progress the Authority Data greater than those rights strictly necessary for the use of the software.

## ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE

### Security Management Plan Template (Accreditation)

#### Universal Services and the National Association for Special Educational Needs

##### 1 Executive Summary

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

##### 2 System Description

###### 2.1 Background

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

###### 2.2 Organisational Ownership/Structure

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

###### 2.3 Information assets and flows

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

###### 2.4 System Architecture

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

###### 2.5 Users

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

###### 2.6 Locations

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

###### 2.7 Test and Development Systems

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

2.8 Key roles and responsibilities

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

**3 Risk Assessment**

3.1 Accreditation/Assurance Scope

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

3.2 Risk appetite

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

3.3 Business impact assessment

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

3.4 Risk assessment

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

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				<p>C4: Protective monitoring</p> <p>C5: Application access control</p> <p>C16: Anti-virus for incoming files</p> <p>C54: Files deleted when processed</p> <p>C59: Removal of departmental identifier</p>	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	<p>C9: TLS communications</p> <p>C10: PGP file-sharing</p>	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	<p>C12. System administrators hold SC clearance.</p> <p>C13. All changes to user information are logged and audited.</p> <p>C14. Letters are automatically sent to users home addresses when bank details are altered.</p>	Low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C15. Staff awareness training	

### 3.5 Controls

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

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

### 3.6 Residual risks and actions

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

## 4 In-service controls

*< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk*

management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:

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

## 5 Security Operating Procedures (SyOPs)

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

## 6 Major Hardware and Software and end of support dates

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

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

## 7 Incident Management Process

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

## 8 Security Requirements for User Organisations

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

**9 Required Changes Register**

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

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

**10 Personal Data Processing Statement**

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

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

*<Any certifications relied upon should have their certificates included>*

**12 Annex B. Cloud Security Principles assessment**

*<A spreadsheet may be attached>*

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

*<A spreadsheet may be attached>*

**14 Annex E. Latest ITHC report and Vulnerability Correction Plan**

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 6**

### **INSURANCE REQUIREMENTS**

## **1 OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
  - (b) appropriately regulated;
  - (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
  - (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

## **2 GENERAL OBLIGATIONS**

- 2.1 Without limiting the other provisions of this Agreement, the Supplier shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3 FAILURE TO INSURE**

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

### **4 EVIDENCE OF INSURANCES**

- 4.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

### **5 CANCELLATION**

- 5.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

### **6 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES**

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: INSURANCE CLAIM NOTIFICATION**

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £30,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

### **PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

#### **1 Insured**

1.1 The Supplier

#### **2 Interest**

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

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 4) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

#### **3 Limit of indemnity**

3.1 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

#### **4 Period of insurance**

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

#### **5 Cover features and extensions**

5.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily

injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

## **6 Principal exclusions**

- 6.1 War and related perils.
- 6.2 Nuclear and radioactive risks.
- 6.3 Liability for death, illness, disease, or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 6.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 6.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 6.6 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.
- 6.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 6.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, and unexpected occurrence.

## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

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

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 7**

### **AUTHORITY RESPONSIBILITIES**

## Authority Responsibilities

### 1 INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in 0 (*Services Description*) and Schedule 8 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph **Error! Reference source not found.**
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

### 2 GENERAL OBLIGATIONS

- 2.1 The Authority shall:
- (a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except 0 (*Services Description*) and Schedule 8 (*Supplier Solution*));
  - (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
  - (c) provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Agreement as defined in the Implementation Plan;
  - (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
  - (e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 8

<redacted>

**MODEL AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 9**

**COMMERCIALY SENSITIVE INFORMATION**

### Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

**MODEL AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 10**

**NOTIFIED KEY SUB-CONTRACTORS & CONSORTIUM PARTNERS**

## Notified Key Sub-Contractors & consortium partners

- 1 In accordance with Clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors and consortium members listed in the tables below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier or Consortium member changes, with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

**Key Subcontractor Table 1**

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number
The Education and Training Foundation (ETF)	<p>Company registration number (England and Wales): 08540597</p> <p>Charity Registration number: 1153859</p> <p>Address: 157-197 Buckingham Palace Road London SW1W 9SP</p>
Autism Education Trust (AET)	<p>National Autistic Society:</p> <p>Charity Registration number in England and Wales (269425) and in Scotland (SC039427).</p> <p>The National Autistic Society is also a company limited by guarantee, registered at Companies House (01205298).</p> <p>Address: 393 City Road, London, EC1V 1NG, UK</p>
Real Group	<p>Company No: 06556128.</p> <p>Address: Insight House, Riverside Business Park, Stoney Common Road, Essex, CM24 8PL.</p>

## Consortium Member Table 2

The Whole School SEND Consortium:

ADHD Foundation
Autism Education Trust (AET)
Achievement for All (AfA)
Association of Educational Psychologists (AEP)
Association of Colleges (AOC)
Astrea Academy Trust
Anti-Bullying Alliance (ABA)
The British Association for Supported Employment (BASE)
Bath Spa University
British Dyslexia Association (BDA)
Child Brain Injury Trust
Council for Disabled Children (CDC)
The Centre for Education and Youth (CFEY)
Delta Education Trust
DFN Project SEARCH
The Dyslexia Sp-LD Trust
The Dyspraxia Foundation
Driver Youth Trust (DYT)
Dyscalculia Association
Equals
I CAN / The Communication Trust
JellyJames Publishing
Leading Learning for Special Educational Needs & Disability (LLSENDcic)
Merton Special Teaching Alliance
The National Association of Independent Schools & Non-Maintained Special Schools (NASS)
The National Sensory Impairment Partnership (NatSIP)
National Children's Bureau (NCB)
The National Development Team for Inclusion (NDTi)
NHS England and NHS Improvement
The National Network of Parent Carer Forums (NNPCF)
Nottinghamshire County Council Educational Psychology Service
National Network of Specialist Provision (NNSP)
Natspec
pdnet
Potential Plus UK
PRUsAP
realtraining
Real Group
Royal College of Speech and Language Therapists (RCSLT)
School Development Support Agency (SDSA)
Special Needs Jungle (SNJ)

Square Peg
The Social, Emotional and Behavioural Difficulties Association (SEBDA)
The Sea View Trust
Sex Education
Talent 4 Transition; Philip Garner Associates (PGA)
Teacher Tapp
UCL Centre for Inclusive Education (UCL)
UEL University of East London, School of Education and Communities (UEL)
UK Association for Accessible Formats (UKAAF)
The United Kingdom Acquired Brain Injury Forum (UKABIF)
University of Birmingham
University of Wolverhampton
Youth Sport Trust (YST)

The Education and Training Foundation delivery partners:

Weston College
Derby College
City College Norwich
London South East College
Hampshire County Council
Activate Learning
Luminate Group
LTE Group
Dynamic Training
Oldham College
National Star
Natspec
Association of Colleges (AoC)
The National Development Team for Inclusion (NDTi)
Autism Education Trust (AET)
DFN Project SEARCH
The British Association for Supported Employment (BASE)
Council for Disabled Children
pdnet
Placeholder for North East Employer Spoke Provider

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 11

### THIRD PARTY CONTRACTS

### Third Party Contracts

- 1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 2 The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 12

### SOFTWARE

## Software

### 1 THE SOFTWARE

- 1.1 Any software created under the contract is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

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

**[Supplier letterhead]**

**[insert Authority  
name and address]**

**[Date]**

Dear Sirs

**LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS  
BACKGROUND IPRS**

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

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

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

Yours faithfully,

Signed:

On behalf of **[name of the Supplier]**

## ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on **[date]** 20

#### BETWEEN:

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

#### WHEREAS:

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

#### IT IS AGREED as follows:

##### 1. Interpretation

2.1 In this Agreement, unless the context otherwise requires:

**“Confidential Information”**

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and

development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

- (c) other Information provided by the Authority pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and
- (d) Information derived from any of the above, but not including any Information that:
  - (a) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Authority;
  - (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
  - (c) was independently developed without access to the Information;

**“Information”**

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

**“Sub-licence”**

has the meaning given to that expression in recital (B) to this Agreement.

2.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;

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

### **3 Confidentiality Obligations**

3.1 In consideration of the Authority entering into the Sub-licence, the Sub- licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
  - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub- licensee) from any computer, word processor, voicemail system or any other device; and

- (iii) make no further use of any Confidential Information.

#### **4 Permitted Disclosures**

- 4.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants, and professional advisers who:
  - (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - (c) have agreed to terms similar to those in this Agreement.
- 4.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 4.3 Before making a disclosure pursuant to Clause 4.2, the Sub-licensee shall, if the circumstances permit:
  - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - (b) ask the court or other public body to treat the Confidential Information as confidential.

#### **5 General**

- 5.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 5.2 This Agreement does not include, expressly or by implication, any representations, warranties, or other obligations:
  - (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety, or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 5.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power, or remedy.

- 5.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 5.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 5.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 5.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 5.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

**6 Notices**

6.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 6.2.

6.2 Any Notice:

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

[Address]

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

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

[Name of Organisation]

[Address]

Attention: [ ]

**7 Governing law**

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

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

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

**For and on behalf of [name of Supplier]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

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

Signature: \_\_\_\_\_

Date:

Name:

Position:

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 13

### IMPLEMENTATION PLAN

## Implementation Plan

### 1 INTRODUCTION

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

### 2 OUTLINE IMPLEMENTATION PLAN

- 2.1 The Outline Implementation Plan can be found at Appendix I - Outline plan, of Schedule 4.1 'Supplier solution'.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Authority Cause*)).

### 3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 3.1 The initial detailed Implementation plan can be found at Annex J – Detailed Project Plan, of Schedule 4.1 'Supplier solution'.
- 3.2 The Supplier shall work with the Authority contract manager to agree and format changes, amendments and additional detail to be added before submitting a draft of the Detailed Implementation Plan to the Authority for approval at the 1<sup>st</sup> or 2<sup>nd</sup> monthly contract management meeting.
- 3.3 The Supplier shall ensure that the draft Detailed Implementation Plan:
- (a) incorporates all of the Activity Milestones and Milestone Dates set out in the Outline Implementation Plan;
  - (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
    - (i) Project Briefing and tendering where applicable
    - (ii) Design and Development.
    - (iii) Implementation
    - (iv) Evaluation
  - (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 12 months, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;

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

#### **4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**

- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- (a) the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
  - (b) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
  - (c) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 18 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
  - (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

## **5 GOVERNMENT REVIEWS**

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

## **ANNEX 1: OUTLINE IMPLEMENTATION PLAN & DETAILED IMPLEMENTATION PLAN TEMPLATE**

Refer to Appendix I - Outline plan, of Schedule 4.1 'Supplier solution' for the Outline implementation plan submitted as a part of the suppliers bid.

Refer to Appendix J – Detailed Project plan, of Schedule 4.1 'Supplier solution' for the initial Detailed implementation plan submitted as a part of the suppliers bid.

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 14**

### **CHARGES AND INVOICING**

## Charges and Invoicing

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

**“Certificate of Costs”** a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in **Error! Reference source not found.**;

**“Costs”** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:
  - (i) base salary paid to the Supplier Personnel;
  - (ii) employer’s national insurance contributions;
  - (iii) Employer Pension Contributions;
  - (iv) car allowances;
  - (v) any other contractual employment benefits;
  - (vi) staff training;
  - (vii) work place accommodation;
  - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
  - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets

by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;

- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism using CT149 'Supplier Expenses and Travel Policy';

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) non-cash items (including depreciation, amortisation, impairments, and movements in provisions);

**“The Employer Pension Contributions”**

means:

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

- (b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority);
- (c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges, or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and

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

**“Indexation” and  
“Index”**

the adjustment of an amount or sum in accordance with Paragraph **Error! Reference source not found.** of Part B;

**“Overhead”**

those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Annex 1;

**“Supporting  
Documentation”**

sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

## **PART A: CHARGES**

### **1 CHARGES**

- 1.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the Authority, for the performance by the Contractor of its obligations under the Contract, shall be the Charges set out in Annex 1: Pricing Mechanism. These shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 1.2 In consideration for the provision of the Services the Authority shall pay the Charges, in accordance with Annex 1, subject to the receipt of correct invoices pursuant to Part D: Invoicing and Payment Terms, being issued by the Contractor.
- 1.3 Except where otherwise expressly stated in this schedule the Contractor shall not be entitled to increase the Charges or any rates identified in Annex 1 throughout the Term.
- 1.4 The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties, and levies, but shall be inclusive of all charges, costs, and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties, and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 1.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.

## **PART B: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER**

### **2 SERVICE CREDITS**

- 2.1 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*).
- 2.2 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 2.3 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

### **3 CHANGES TO CHARGES**

- 3.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 19 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall in no event exceed the Maximum Permitted Profit Margin.
- 3.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

### **4 RISK REGISTER**

- 4.1 The Parties shall review the Risk Register set out in Annex 2 from time to time and as otherwise required for the purposes of Schedule 18 (*Governance*).

## **PART C: EXCESSIVE SUPPLIER PROFIT MARGIN**

### **1 LIMIT ON SUPPLIER PROFIT MARGIN**

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 16 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

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

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 16 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
  - (a) the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
  - (b) the Authority (acting reasonably) may agree or reject the proposed adjustments;
  - (c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
  - (d) if the Parties cannot agree such revised adjustments and the Authority terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (*Termination by the Authority*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part C, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

## **PART D: INVOICING AND PAYMENT TERMS**

### **1 SUPPLIER INVOICES**

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

separately, any VAT or other sales tax payable in respect of each of the same;

- (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (o) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.

1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of **Error! Reference source not found.** The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

Any supporting documentation (timesheets, emails etc.) also need to be in a PDF format, ensuring that the actual invoice is present on the first page.

1.6 The Supplier shall submit all invoices and Supporting Documentation in PDF format through to the Accounts Payable Team:

[accountspayable.OCR@education.gov.uk](mailto:accountspayable.OCR@education.gov.uk))

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

1.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the

Authority's requirements set out in this Part D, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

- 1.9 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1, Payment in 30 days, after a reasonable time has passed.
- 1.10 If the Supplier has any queries relating to specific invoices (or payments) and/or would like a copy of their Remittance Advice, they should email the Accounts Payable team ([accountspayable.BC@education.gov.uk](mailto:accountspayable.BC@education.gov.uk))

## **2 PAYMENT TERMS**

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

## ANNEX 1: PRICING MECHANISM

### YEAR 1 FINANCIAL BREAKDOWN

Strand	Activity	Invoice	£	£	Q1 £	£	£	Q2 £	£	£	Q3£	£	£	Q4 £	Year Total £
A1	Online SEND CPD	Quarterly	<redacted>												
A2	SEND CPD Online Live Sessions	Quarterly	<redacted>												
A3	Sector Led PD Groups	Quarterly	<redacted>												
A4	Peer Review for SEND	Quarterly	<redacted>												
A5	Peer Mentoring for SEND	Quarterly	<redacted>												

A6	Raising the Status of the SEND Specialist	Quarterly	<redacted>												
A7	School and FE Based Research	Quarterly	<redacted>												
A8	Innovation for SEND	Quarterly	<redacted>												
A9	Community Network for SEND	Quarterly	<redacted>												
A10	Resources for SEND	Quarterly	<redacted>												
A11	Specific and Distinct Autism Training and Support														

A12	Preparation for Adulthood															
A13	Using Specialist Knowledge															
A14	Supporting Positive Transitions															
A15	Sharing of Effective Practice															
A16	Engagement and Joined-Up Support															
A17	Addressing Needs and Incorporating Views															

A18	Disseminating Resources															
B1	Improve Autism Provision at Every Age and Stage	Quarterly	<redacted>													
B2	Education leaders will embrace best-practice															
C1	Improve PfA at Every Age and Stage	Quarterly	<redacted>													
C2	Improving the Transition to Adulthood – Employability															
C3	Incorporating Views of Workforce/Stakeholders															

D1	Steering Groups	Quarterly	<redacted>												
D	Effectively deliver the offer to the school and FE workforce														
E	Governance and Programme Management														
	Staffing ( <i>broken down on next tab</i> )	Monthly	<redacted>												
	Overheads	Monthly	<redacted>												
	Profit	Monthly	<redacted>												

	Expenses (invoiced as incurred)	Quart erly	<redac ted>												
<b>Sub-Total</b>			<redac ted>												
VAT			<redac ted>												
<b>TOTAL</b>			<redac ted>	3,919,9 96											

## YEAR 2 FINANCIAL BREAKDOWN

Strand	Activity	Invoice	£	£	£	£	£	£	£	£	£	£	£	£	£
A1	Online SEND CPD	Quarterly	<redacted>												
A2	SEND CPD Online Live Sessions	Quarterly	<redacted>												
A3	Sector Led PD Groups	Quarterly	<redacted>												
A4	Peer Review for SEND	Quarterly	<redacted>												
A5	Peer Mentoring for SEND	Quarterly	<redacted>												

A6	Raising the Status of the SEND Specialist	Quarterly	<redacted>												
A7	School and FE Based Research	Quarterly	<redacted>												
A8	Innovation for SEND	Quarterly	<redacted>												
A9	Community Network for SEND	Quarterly	<redacted>												
A10	Resources for SEND	Quarterly	<redacted>												
A11	Specific and Distinct Autism Training and Support														

A12	Preparation for Adulthood														
A13	Using Specialist Knowledge														
A14	Supporting Positive Transitions														
A15	Sharing of Effective Practice														
A16	Engagement and Joined-Up Support														
A17	Addressing Needs and Incorporating Views														

A18	Disseminating Resources														
B1	Improve Autism Provision at Every Age and Stage	Quarterly	<redacted>												
B2	Education leaders will embrace best-practice														
C1	Improve PfA at Every Age and Stage	Quarterly	<redacted>												
C2	Improving the Transition to Adulthood – Employability														
C3	Incorporating Views of Workforce/Stakeholders														

D1	Steering Groups	Quarterly	<redacted>												
D	Effectively deliver the offer to the school and FE workforce														
E	Governance and Programme Management														
	Staffing ( <i>broken down on next tab</i> )	Monthly	<redacted>												
	Overheads	Monthly	<redacted>												
	Profit	Monthly	<redacted>												

	Expenses (invoiced as incurred)	Quarterly	<redacted>													
<b>Sub-Total</b>			<redacted>													
VAT			<redacted>													
<b>TOTAL</b>			<redacted>	3,919,967												

## YEAR 3 FINANCIAL BREAKDOWN

Strand	Activity	Invoice	£	£	£	£	£	£	£	£	£	£	£	£	£
A1	Online SEND CPD	Quarterly	<redacted>												
A2	SEND CPD Online Live Sessions	Quarterly	<redacted>												
A3	Sector Led PD Groups	Quarterly	<redacted>												
A4	Peer Review for SEND	Quarterly	<redacted>												
A5	Peer Mentoring for SEND	Quarterly	<redacted>												
A6	Raising the Status of the SEND Specialist	Quarterly	<redacted>												

A7	School and FE Based Research	Quarterly	<redacted>												
A8	Innovation for SEND	Quarterly	<redacted>												
A9	Community Network for SEND	Quarterly	<redacted>												
A10	Resources for SEND	Quarterly	<redacted>												
A11	Specific and Distinct Autism Training and Support														
A12	Preparation for Adulthood														
A13	Using Specialist Knowledge														

A14	Supporting Positive Transitions														
A15	Sharing of Effective Practice														
A16	Engagement and Joined-Up Support														
A17	Addressing Needs and Incorporating Views														
A18	Disseminating Resources														
B1	Improve Autism Provision at Every Age and Stage	Quarterly	<redacted>												
B2	Education leaders will embrace best-practice														

C1	Improve PfA at Every Age and Stage	Quarterly	<redacted>												
C2	Improving the Transition to Adulthood – Employability														
C3	Incorporating Views of Workforce/Stakeholders														
D1	Steering Groups	Quarterly	<redacted>												
D	Effectively deliver the offer to the school and FE workforce														
E	Governance and Programme Management														
	Staffing ( <i>broken down on next tab</i> )	Monthly	<redacted>												

	Overheads	Mont hly	<redac ted>												
	Profit	Mont hly	<redac ted>												
	Expenses (invoiced as incurred)	Quart erly	<redac ted>												
<b>Sub-Total</b>			<redac ted>												
VAT			<redac ted>												
<b>TOTAL</b>			<redac ted>	<b>3,919,7 80</b>											

## STAFF COSTS

#	Job Title	Total On Cost	Allocated to Contract	Contract Cost
1	Consortium Chair (nasen CEO)	<redacted>	<redacted>	<redacted>
2	Education Director	<redacted>	<redacted>	<redacted>
3	Head of Whole School SEND & Education	<redacted>	<redacted>	<redacted>
4	Deputy Head of Whole School SEND	<redacted>	<redacted>	<redacted>
5	Head of Programme Management	<redacted>	<redacted>	<redacted>
6	Senior Project Manager	<redacted>	<redacted>	<redacted>
7	Senior Project Manager	<redacted>	<redacted>	<redacted>
8	Project Manager	<redacted>	<redacted>	<redacted>
9	Project Manager	<redacted>	<redacted>	<redacted>
10	Programme Assistant	<redacted>	<redacted>	<redacted>
11	Communications Manager	<redacted>	<redacted>	<redacted>
12	Finance Administrator	<redacted>	<redacted>	<redacted>
13	Data Manager	<redacted>	<redacted>	<redacted>
14	National Leads x2 (<redacted> days @ <redacted> /day)	<redacted>	<redacted>	<redacted>
15	National Head Of Inclusion - ETF	<redacted>	<redacted>	<redacted>
16	Performance Manager - ETF	<redacted>	<redacted>	<redacted>
17	National Co-ordinator	<redacted>	<redacted>	<redacted>
18	National Co-ordinator	<redacted>	<redacted>	<redacted>
19	Regional Leads (1 per region - <redacted> days @ <redacted>/day)	<redacted>	<redacted>	<redacted>
20	Deputy Regional Leads (<redacted> per region - <redacted> days @ <redacted>/day)	<redacted>	<redacted>	<redacted>

## OVERHEADS

Area	Detail	2022/23	2023/24	2024/25
Compliance	Insurance	<redacted>	<redacted>	<redacted>
Compliance	Audit and compliance fees	<redacted>	<redacted>	<redacted>
Compliance	Finance system fee	<redacted>	<redacted>	<redacted>
IT	Hosting CMS	<redacted>	<redacted>	<redacted>
IT	Hosting LMS	<redacted>	<redacted>	<redacted>
IT	Software licenses - Microsoft, Zoom and Dotmailer	<redacted>	<redacted>	<redacted>
IT	IT consumables	<redacted>	<redacted>	<redacted>
IT	Software support contracts	<redacted>	<redacted>	<redacted>
IT	Membership communications fees	<redacted>	<redacted>	<redacted>
People	Life cover	<redacted>	<redacted>	<redacted>
People	Training and development	<redacted>	<redacted>	<redacted>
People	Indirect salaries	<redacted>	<redacted>	<redacted>
Premises	Rent	<redacted>	<redacted>	<redacted>
Premises	Office costs	<redacted>	<redacted>	<redacted>
		<redacted>	<redacted>	<redacted>

## **ANNEX 2: RISK REGISTER**

Please see Schedule 8 Supplier Solution, Annex K for the Risk Register.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 15

### FINANCIAL DISTRESS

## Financial Distress

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Financial Indicators”** means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Key Lead Supplier and Key Subcontractors;
- “Board”** means the Supplier’s board of directors;
- “Board Confirmation”** means written confirmation from the Board in accordance with Paragraph 7 of this Schedule;
- “FDE Group”** means the Supplier, Key Sub-contractors, and the Consortium Members
- “Financial Indicators”** in respect of the Supplier and Key Sub-contractors, means each of the financial indicators set out at paragraph 5.1 of this Schedule;
- “Financial Target Thresholds”** means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;

### 2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the financial position or, as appropriate, the financial performance of each of the Supplier and Key Sub-contractors satisfies:

(a) the Financial Target Thresholds.

or

(b) the Authorities assessment based on charitable status.

2.2 If the authority requests, within 30 working days the Supplier shall:

(a) report on the Financial Indicators for each entity in the FDE Group.

(b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the

Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.3 The Financial Viability Risk Assessment Tool utilised within the tender process will be provided to the supplier to be used as a basis for each report requested and pursuant to paragraph 2.2(a) shall:

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

### **3 FINANCIAL DISTRESS EVENTS**

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping significantly;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
  - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £1m or

obligations under a service contract with a total contract value greater than £1m;

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

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

#### **4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS**

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
  - (a) rectify such late or non-payment; or
  - (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any relevant Key Sub-contractor shall):
  - (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 5 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
  - (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

- (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
  - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Key Sub-contractors as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
- 4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.
- 4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
- 4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
  - (a) on a regular basis (which shall not be less than fortnightly):
    - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
    - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

- (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
- (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

- (a) obtaining in advance written authority from Key Sub-contractors authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
- (b) agreeing in advance with the Authority and Key Sub-contractors a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
- (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

## 5 FINANCIAL INDICATORS

5.1 Subject to the calculation methodology set out at 0 of this Schedule, the Financial Indicators and the corresponding calculations used to as supplementary information when assessing a Financial Distress Event, shall be as follows:

Financial Indicator	Calculation <sup>1</sup>
---------------------	--------------------------

<b>1</b> <b>Operating Margin</b>	<i>Operating Margin = Operating Profit / Revenue</i>
<b>2</b> <b>Free Cash Flow to Net Debt Ratio</b>	<i>Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt</i>
<b>3</b> <b>Net Debt + Net Pension Deficit to EBITDA ratio</b>	<i>Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA</i>
<b>4</b> <b>Net Interest Paid Cover</b>	<i>Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid</i>
<b>5</b> <b>Acid Ratio</b>	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities</i>
<b>6</b> <b>Net Asset value</b>	<i>Net Asset Value = Net Assets</i>
<b>7</b> <b>Group Exposure Ratio</b>	<i>Group Exposure / Gross Assets</i>
<b>8</b> <b>Net Debt to EBITDA Ratio</b>	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>

Key: <sup>1</sup> – See 0 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

## **6 TERMINATION RIGHTS**

- 6.1 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 2.2(b);
  - (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

## 7 BOARD CONFIRMATION

- 7.1 If this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of Part B to Schedule 23 (*Service Continuity Plan and Corporate Resolution Planning*) then, at the Authorities request and subject to Paragraph 7.3 of this Schedule, the Supplier shall provide a Board Confirmation to the Authority in the form set out at 0 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
  - (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting;  
or
  - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 7.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 7.3 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 7.1 to **Error! Reference source not found.** of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

## **ANNEX 1: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS**

If a report against the financial indicators is requested, the authority shall provide the Lead Supplier with the Financial Viability Risk Assessment Tool utilised within the tender process to complete. Within this tool will be guidance around completion relating to each financial indicator for the Lead Supplier and all Key Subcontractors.

**ANNEX 2: BOARD CONFIRMATION**

**Supplier Name:**

**Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at paragraph 7 of Schedule 15 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

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

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

On behalf of the Board of Directors:

Chair .....  
Signed .....  
Date .....

Director .....  
Signed .....  
Date .....

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 16**

### **FINANCIAL REPORTS AND AUDIT RIGHTS**

## Financial Reports and Audit Rights

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Annual Contract Report”</b>	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Audit Agents”</b>	(a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
<b>“Contract Amendment Report”</b>	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Final Reconciliation Report”</b>	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Financial Model”</b>	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
<b>“Financial Reports”</b>	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
<b>“Financial Representative”</b>	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

<b>“Financial Transparency Objectives”</b>	has the meaning given in Paragraph 1 of Part A;
<b>“Material Change”</b>	<p>a Change which:</p> <ul style="list-style-type: none"> <li>(a) materially changes the profile of the Charges; or</li> <li>(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: <ul style="list-style-type: none"> <li>(i) 5% or more; or</li> <li>(ii) £1m or more;</li> </ul> </li> </ul>
<b>“Onerous Contract”</b>	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
<b>“Onerous Contract Report”</b>	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
<b>“Open Book Data”</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>(a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</li> <li>(b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> <li>(i) the unit costs and quantity of consumables and bought-in services;</li> <li>(ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of</li> </ul> </li> </ul>

- agreed rates against each manpower grade;
- (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
  - (iv) Reimbursable Expenses;
- (c) Overheads;
  - (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
  - (e) the Supplier Profit achieved over the Term and on an annual basis;
  - (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
  - (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
  - (h) the actual Costs profile for each Service Period.

## **PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

### **1 FINANCIAL TRANSPARENCY OBJECTIVES**

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

#### **(a) Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (iii) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 14 (*Charges and Invoicing*));

#### **(b) Agreeing the impact of Change**

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

#### **(c) Continuous improvement**

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

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

### **2 OPEN BOOK DATA**

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

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

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

### **3 ONEROUS CONTRACTS**

3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
- (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
- (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
- (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.

3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors; and the project's senior responsible officers (or equivalent) for each Party).

3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor

shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

## PART B: FINANCIAL REPORTS

### 1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

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

<b>Financial Report</b>	<b>When to be provided</b>
<b>Contract Amendment Report</b>	Within 1 month of a Material Change being agreed between the Supplier and the Authority
<b>Quarterly Contract Report</b>	To be submitted with the Quarterly contract management report
<b>Annual Contract Report</b>	Within 1 month of the end of the Contract Year to which that report relates
<b>Final Reconciliation Report</b>	Within 6 months after the end of the Term

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

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

1.4 Each Financial Report shall:

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

- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
  - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
  - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
  - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
  - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
  - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - (b) the forecast Charges for the remainder of the Term,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

## **2 FINANCIAL MODEL**

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

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
  - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
  - (ii) the Authority has approved the relevant Financial Report.

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

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 20 (*Dispute Resolution Procedure*).

### **3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT**

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

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

#### **4 KEY SUB CONTRACTORS**

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
  - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
    - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
    - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## PART C: AUDIT RIGHTS

### 1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
  - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
  - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
  - (d) to verify the Certificate of Costs and/or the Open Book Data;
  - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Key Sub-contractors or their ability to perform the Services;
  - (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
  - (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
  - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers;
- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (r) to review the Supplier's compliance with the Standards;
- (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (t) to review the integrity, confidentiality, and security of the Authority Data.

1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 CONDUCT OF AUDITS Open source**

2.1 The Authority shall during each audit comply with those security, sites, systems, and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the permitted scope of the audit;

- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier System; and
  - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

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

### **4 RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:

- (i) the amount overpaid;
- (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
- (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 17

### ANTICIPATED SAVINGS

## ANTICIPATED SAVINGS

This Schedule defines the key benefit categories in which savings are anticipated.

As per paragraph 1.3 of Part A of Schedule 3, both Parties agree that that efficiencies in delivery should be identified throughout the term of the contract, notably in years 2 & 3, and KPI's will be reviewed annually to incorporate these efficiencies.

If applicable these efficiencies should also be logged in the 'Anticipated Savings' table below:

Ref.	Benefit Category	Indicative amount (£k) or Measure of none monetary	Timescale
1	<p><i>[E.g. - Reduction in Service Charges as Service delivery becomes more efficient and effective.</i></p> <p><i>Benefit realisation is measured against [a 2012/13 baseline.]</i></p>	<p>£[amount] per annum</p> <p>or [x]% productivity increase</p>	Contract Years [x] to [y]
2	<p><i>[E.g. - Improvements in Authority staff productivity from using more flexible and agile services that match the needs of the business.</i></p> <p><i>Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2013/14.]</i></p>	<p>£[amount] year on year improvement</p> <p>or [x]% productivity increase</p>	Contract Years [x] to [y]
3	<p><i>[E.g. - Reduced electrical power consumption arising from adoption of new low energy technology.</i></p> <p><i>Benefit realisation is measured against a 2012/13 baseline.]</i></p>	<p>£[amount] per annum</p> <p>or [x]% productivity increase</p>	Contract Years [x] to [y]

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 18

### GOVERNANCE

## **Governance**

### **1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

**“Board Member”** the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

**“Boards”** the Service Management Board which shall include, Change Management and Risk Management and be in line with the Operational contract management team;  
  
The Programme Board, broadly in line with the senior leadership team;  
  
and **“Board”** shall mean any of them;

**“Project Managers”** the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;

**“Service Management Board”** the body described in Paragraph 4;

### **2 MANAGEMENT OF THE SERVICES**

2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed day-to-day.

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

### **3 BOARDS**

#### **Establishment and structure of the Boards**

3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board, the:

- (a) Authority Board Members;
  - (b) Supplier Board Members;
  - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
  - (d) location of the Board's meetings; and
  - (e) planned start date by which the Board shall be established,
- shall be as set out in Annex 1.

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

#### **Board meetings**

3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend the relevant Monthly/Quarterly meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

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

3.5 The Authority Contract Manager shall be responsible for:

- (a) Scheduling Monthly/Quarterly meetings;
- (b) setting the agenda for Monthly/Quarterly meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Monthly/Quarterly meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Monthly/Quarterly meetings;
- (e) where deemed necessary, ensuring that minutes for Monthly/Quarterly meetings are recorded and disseminated electronically to the appropriate persons and to all meeting participants within seven Working Days after the Board meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Monthly/Quarterly meeting is given effect in the appropriate manner.

- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 ROLE OF THE SERVICE MANAGEMENT BOARD**

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

#### **5 CHANGE MANAGEMENT**

- 5.1 The Service Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.
- 5.2 The Service Management Board shall:
- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:

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

## **6 RISK MANAGEMENT**

6.1 The Service Management Board shall identify and manage risks relating to the performance of the Services.

6.2 The Service Management Board shall:

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

## **7 ROLE OF THE PROGRAMME BOARD**

7.1 The Programme Board shall endeavour to attend to Quarterly or Bi-Annual programme reviews and:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Service Management Board; and
- (c) carry out the specific obligations attributed to it in Paragraph 7.2.

7.2 The Programme Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

## **8 CONTRACT MANAGEMENT MECHANISMS**

- 8.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 8.2 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.
- 8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

## **9 ANNUAL REVIEW**

- 9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 9.2 The meetings shall be attended by the Contract Manager of the Supplier and the Contract Manager of the Authority and any other persons considered by the Authority necessary for the review.

## ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

### Service Management Board (Operational Contract Management)

Authority Members of Service Management Board	<redacted><redacted><redacted><redacted><redacted> <redacted><redacted><redacted> <redacted><redacted><redacted> <redacted><redacted><redacted><redacted>
Supplier Members of Service Management Board	<redacted><redacted><redacted><redacted><redacted> <redacted><redacted><redacted> <redacted> <redacted><redacted><redacted><redacted><redacted> <redacted><redacted><redacted> <redacted><redacted>

### Programme Board (Senior Leadership Team)

Authority members of Programme Board	<redacted><redacted> <redacted> <redacted><redacted> <redacted><redacted><redacted><redacted><redacted><redacted>
Supplier members of Programme Board	<redacted> <redacted>- <redacted> <redacted><redacted><redacted><redacted><redacted><redacted>

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 19**

### **CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

### 2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

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;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires a programme for implementation, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the 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 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

### **3 COSTS**

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
  - (i) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (ii) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 14 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

#### **4 CHANGE REQUEST**

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

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

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

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the

Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) The nature of the request for clarification; and
- (b) The reasonable justification for the request;

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

## **5 IMPACT ASSESSMENT**

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

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
  - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
  - (b) facilitate the Financial Transparency Objectives;
  - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
  - (d) include full disclosure of any assumptions underlying such Impact Assessment;
  - (e) include evidence of the cost of any assets required for the Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **6 AUTHORITY'S RIGHT OF APPROVAL**

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
  - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

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

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

## **7 SUPPLIER'S RIGHT OF APPROVAL**

7.1 Following an Impact Assessment, if:

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

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

## **8 FAST-TRACK CHANGES**

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

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed 10% of the annual contract value and doesn't cumulatively total over PCR 2015 variation thresholds, when taking into account previous changes that have occurred within the contract term, and that the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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

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

## 9 OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.

9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

## **10 COMMUNICATIONS**

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

### ANNEX 1: CHANGE REQUEST FORM

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

## ANNEX 2: CHANGE AUTHORISATION NOTE

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

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 20**

### **DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

## 2 DISPUTE NOTICES

2.1 If a Dispute arises then:

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

2.2 A Dispute Notice:

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

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

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

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

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

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

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

### **3 EXPEDITED DISPUTE TIMETABLE**

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### **4 COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Contract Managers and the Supplier's Contract Manager.

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

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

## **5 MEDIATION**

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

## **6 EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
  - (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
  - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
    - (i) an appropriate body agreed between the Parties; or
    - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
  - (e) the process shall be conducted in private and shall be confidential; and
  - (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **7 ARBITRATION**

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
  - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
  - (b) the arbitration shall be administered by the LCIA;
  - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

## **8 URGENT RELIEF**

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
  - (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## **9 MULTI-PARTY DISPUTES**

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute,

the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

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

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

(c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 21**

### **REPORTS AND RECORDS PROVISIONS**

## Reports and Records Provisions

### 10 REPORTS

- 10.1 The Authority may require any or all of the following reports:
- (a) delay reports;
  - (b) reports relating to Testing and tests carried out under Schedule 5 (*Security Management*) and Schedule 23 (*Service Continuity Plan and Corporate Resolution Planning*);
  - (c) reports which the Supplier is required to supply as part of the Management Information;
  - (d) annual reports on the Insurances;
  - (e) security reports; and
  - (f) Force Majeure Event reports.

### 11 RECORDS

- 11.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph **Error! Reference source not found.** and **Error! Reference source not found.** (together “Records”):
- (a) in accordance with the requirements of The National Archives and Good Industry Practice;
  - (b) in chronological order;
  - (c) in a form that is capable of audit; and
  - (d) at its own expense.
- 11.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 11.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 11.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 11.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 11.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the

Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

- (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

## 12 Virtual Library

12.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in accordance with the requirements outlined in this Schedule.

12.2 The Supplier shall ensure that the Virtual Library is:

- (a) capable of holding and allowing access to the information described in Annex 4 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
- (b) structured so that each document uploaded has a unique identifier which is automatically assigned;
- (c) readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,
- (d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
- (e) structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 5 (*Security Management*);
- (f) created and based on open standards in Schedule 4 (*Standards*); and
- (g) backed up on a secure off-site system.

- 12.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Clause 17.1 (*Project Specific IPR*) of this Agreement.
- 12.4 The Supplier shall upload complete and accurate information specified in Annex 4 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 12.1) onto Virtual Library in the format specified.
- 12.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:

SendBaea.COMMERCIAL@education.gov.uk

- 12.6 Except for notices under Clause 44.4 or items covered by Clause 44.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Agreement, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this paragraph 12 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 12.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 4 shall not take precedence over any other obligation to provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 12.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 4) access to view and download the specified information in the Virtual Library in Annex 4 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 4 to this Schedule.
- 12.9 Where Access Permission is not listed (in column 6 of the table at Annex 4) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 4) from the Initial Upload Date.
- 12.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:
- (a) be entitled to access, view and download information specified in Annex 4 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under paragraph 12.10(b) of this Schedule); and
  - (b) report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.

- 12.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 4. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 12.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.
- 12.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 4.
- 12.14 In the event of a conflict between any requirement in this Agreement (excluding Annex 4) for the Supplier to provide information to the Authority and the requirements set out in Annex 4 of this Schedule, the requirement elsewhere in this Agreement shall prevail.
- 12.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 12.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 12.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 12.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.



### ANNEX 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.
- 13 All other documents which this Agreement expressly requires to be prepared.
- 14 Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
- 15 Notices, reports, and other documentation submitted by any Expert.
- 16 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.
- 17 Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
- 18 All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
- 19 All certificates, licences, registrations, or warranties in each case obtained by the Supplier in relation to the provision of the Services.
- 20 Documents prepared by the Supplier in support of claims for the Charges.
- 21 Documents submitted by the Supplier pursuant to the Change Control Procedure.
- 22 Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
- 23 Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 24 Invoices and records related to VAT sought to be recovered by the Supplier.
- 25 Financial records, including audited and un-audited accounts of the Supplier.
- 26 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.
- 27 All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
- 28 All journals and audit trail data referred to in Schedule 5 (*Security Management Plan*).
- 29 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

## ANNEX 4: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl 14.3	Key Personnel	Sch 26	Effective Date	On replacement of Key Personnel	Authority
Sch 3, Part B Para 2.3	Performance Monitoring Report	Sch 3, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Authority
Sch 5, Para 4.4	Security Management Plan	Sch 5, <b>Error! Reference source not found.</b>	As stated in the Schedule agreement	Regular review and at least annually	Authority
Sch 5, Para 6.1, <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b>	Security certificates	As appropriate and agreed by the Authority	Prior to receiving, storing, or processing any Authority Data	-	-

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Sch 6, Para 4	Evidence of Insurances	Sch 6	Effective Date	Within fifteen (15) days after policy renewal or replacement	Authority
CI 22	Commercially Sensitive Information	Sch 9	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor
CI 15.7	Notified Key Subcontractors	Sch 10	Effective Date	On replacement of key subcontractor	Authority
CI 15.5	Third Party Contracts	Sch 11	Effective Date	On appointment of subcontract	Authority
CI 15.6	Notified Key Sub-Contractors	Sch 10	Effective Date	With each approved appointment or variation	Authority
CI 6.4	Detailed Implementation Plan	Sch 13	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Authority
Sch 14, Annex 2	Risk Register	Sch 14, Annex 2	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Sch 15 Para 2.2(a)	Financial Indicator Reports	Sch 15 para 2.3	As specified in para 2.2(a) of Sch 15	As specified in para 2.2(a) of Sch 15	Authority
Sch 15 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Authority
Sch 16, Part B, para 1.2	Contract Amendment Report	Sch 16, Part B, para 1.2	Within 1 month of a material change being agreed	-	Authority
Sch 16, para 1.1	Quarterly Contract Report	Sch 16, Part B, para 1.2	Within 1 month of the end of each Quarter	-	Authority
Sch 16, Part B, para 1.2	Annual Contract Report	Sch 16, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates	-	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Sch 16 Part B, para 1.2	Financial Reconciliation Report	Sch 16, Part B, para 1.2	Within 6 months after the end of the Term	-	Authority
Sch 18, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	As appropriate and agreed by the Authority	-	Authority
Sch 19, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority
Sch 19, Para 4	Change Request	Sch 19, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-	Authority
Sch 20, Para 2.1	Dispute Notice	Sch 20 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Authority
Sch 20, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 21, Para <b>Error!</b> <b>Reference source not found.</b>	Reports and Records Provisions	Sch 21, <b>Error!</b> <b>Reference source not found.</b>	Within 3 months of the Effective Date	Frequency specified in Sch 21, <b>Error!</b> <b>Reference source not found.</b>	Authority
Sch 22, Para 2.1(a)	Register of All Assets, Sub-contracts, and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 22, Para 2.1(b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 22, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 22, Para 4.1	Exit Plan	Sch 22, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and  Within 14 days if requested by the	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
				Authority following a Financial Distress Event  Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement	
Sch 22, Para 6.7(b)	Authority Data (handback)	Sch 21, Para 11 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 22, Annex 1, Para 9.3, Para 9.5 & Para 9.6	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 23 Service Continuity	Service Continuity Plan	Sch 23, Para 2.2	Within 40 days from the Effective Date	Sch 23, Para 7.1	Authority
Sch 23, Para 6.2	Service Continuity Plan Review Report	Sch 23, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 23	Corporate Resolution Planning Information	Sch 23, Para 11.3	Sch 23 Part B Para 11.2	Sch 23, Para 11.8	Authority
Sch <b>Error! Reference source not found.</b> , 0, Para 3.2	Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch <b>Error! Reference source not found.</b> , Para 3.2 A-D	At such intervals as are reasonably requested by the Authority	Authority
Sch <b>Error! Reference source not found.</b> , 0, Para 3.7	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date	-	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Sch <b>Error! Reference source not found.</b> , 0, Para 3.8	Payroll and benefits information	As appropriate and agreed by the Authority	As appropriate and agreed by the Authority	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor
Sch 27, <b>Error! Reference source not found.</b> Para <b>Error! Reference source not found.</b>	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier

**ANNEX 5: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE**

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

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 22

### EXIT MANAGEMENT

## Exit Management

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Agreement which is a: <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause 33 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (<i>Termination Rights</i>); or</li><li>(c) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Ethical Wall Agreement”</b>	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at <b>Error! Reference source not found.</b> ;
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>“Non-Exclusive Assets”</b>	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;

<b>“Ordinary Exit”</b>	any termination of the whole or any part of this Agreement which occurs: <ul style="list-style-type: none"> <li>(a) pursuant to Clause 33 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</li> <li>(b) as a result of the expiry of the Initial Term or any Extension Period;</li> </ul>
<b>“Registers”</b>	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
<b>“Transferable Assets”</b>	those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>“Transferable Contracts”</b>	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
<b>“Transferring Contracts”</b>	has the meaning given in Paragraph 7.2(b).

## 2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
  - (i) Assets, detailing their:
    - (A) make, model and asset number;
    - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (C) Net Book Value;
    - (D) condition and physical location; and
    - (E) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

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

### **3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

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

(f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and

(g) such other material and information as the Authority shall reasonably require,

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

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

3.3 The Supplier shall:

(a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

(b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

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

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

(a) prepare an informed offer for those Services; and

(b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

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

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

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

#### **5 EXIT PLAN**

- 5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
  - (b) complies with the requirements set out in Paragraph 5.2; and
  - (c) is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
  - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
  - (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
  - (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - (e) the management structure to be employed during the Termination Assistance Period;
  - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);

- (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;
- (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule **Error! Reference source not found.** (*Staff Transfer*); and
- (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

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

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

### **Finalisation of the Exit Plan**

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

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

## **6 TERMINATION SERVICES**

### **Notification of Requirements for Termination Services**

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **“Termination Assistance Notice”**) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.
- 6.2 The Authority shall have:
- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
  - (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

### **Termination Assistance Period**

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;

- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
  - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
  - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
  - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

### **Termination Obligations**

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- (a) cease to use the Authority Data;
  - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination

Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;

- (d) return to the Authority such of the following as is in the Supplier's possession or control:
  - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
  - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
  - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
  - (iv) any items that have been on-charged to the Authority, such as consumables;
- (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry, or termination of this Agreement to:
  - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

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

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

## 7 ASSETS, SUB-CONTRACTS AND SOFTWARE

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

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

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

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
  - (i) which, if any, of:
    - (A) the Exclusive Assets that are not Transferable Assets; and
    - (B) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

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

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

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
  - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

7.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:

- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (*Intellectual Property Rights*) and/or Clause 17 (*Transfer and Licences Granted by the Supplier*).

## 8 SUPPLIER PERSONNEL

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

## 9 APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties, and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;

- (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

## ANNEX 1: SCOPE OF THE TERMINATION SERVICES

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

plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

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

- (x) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (y) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (z) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision, or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

9.4 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 9.3(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 9.3(o), providing skills and expertise of a suitable standard; and

- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 9.3(v), providing skills and expertise of a reasonably acceptable standard.
- 9.5 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 9.6 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 9.3(x) shall include:
- (a) copies of up-to-date procedures and operations manuals;
  - (b) product information;
  - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
  - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
  - (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
  - (f) details of physical and logical security processes and tools which will be available to the Authority; and
  - (g) any relevant interface information.
- 9.7 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants, and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 9.7 shall:
    - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (ii) during each period of access comply with the security, systems, and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and

- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven, and proper costs of the Supplier incurred in facilitating such access.

**MODEL AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 23**

**SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING**

## PART A: SERVICE CONTINUITY PLAN

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

**“Service Continuity Plan”** means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

## **2 SERVICE CONTINUITY PLAN**

2.1 Within 3 months 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 (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

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

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

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

2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

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

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

#### **3.1 Part A of the Service Continuity Plan shall:**

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

- (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
  - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
  - (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
  - (i) identify the procedures for reverting to “normal service”;
  - (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
  - (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

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

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a

Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

#### **4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY**

##### **PRINCIPLES AND CONTENTS**

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

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

#### **5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY**

##### **PRINCIPLES AND CONTENTS**

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
  - (i) data centre and disaster recovery site audits;
  - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
  - (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

## **6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN**

### **PRINCIPLES AND CONTENTS**

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency

Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors, and Supplier Group members); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

## **7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any

costs that it may incur above any estimate without the Authority's prior written approval.

- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
- (a) the findings of the review;
  - (b) any changes in the risk profile associated with the Services; and
  - (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3

and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 7.5 The Supplier shall as soon as 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.

## **8 TESTING OF THE SERVICE CONTINUITY PLAN**

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
  - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - (c) the Supplier's proposals for remedying any such failures.

- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
  - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

## **PART B: CORPORATE RESOLUTION PLANNING**

### **10 Service Status and Supplier Status**

- 10.1 This Agreement is a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within 20 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

### **11 Provision of Corporate Resolution Planning Information**

- 11.1 Paragraphs 11 to 13 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part B:
- (a) where this Agreement is a Critical Service Contract, if requested, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days; and
  - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B:
- (a) is full, comprehensive, accurate and up to date;
  - (b) is split into two parts:
    - (i) Group Structure Information and Resolution Commentary;
    - (ii) UK Public Service / CNI Contract Informationand is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
  - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
  - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works

provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

- (e) complies with the requirements set out at Annex 2 (Group Structure Information and Resolution Commentary) and Annex 3 (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.

11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:

- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part B if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has

elapsed since the Accounting Reference Date on which the CRP Information was based); and

- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.

11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph **Error! Reference source not found.** of Schedule 15 (*Financial Distress*)
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
  - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
  - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
  - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
  - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (a) Aa3 or better from Moody's;
- (b) AA- or better from Standard and Poors;
- (c) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph **Error! Reference source not found.** of Schedule 15 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

## 12 Termination Rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part B and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

## 13 Confidentiality and usage of CRP Information

13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable

endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part B and Clause 21.

- 13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
  - (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
    - (i) summarising the information;
    - (ii) grouping the information;
    - (iii) anonymising the information; and
    - (iv) presenting the information in general terms
- 13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

## **ANNEX 2: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY**

1. The Supplier shall:
  - 13.6 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 3 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
  - 13.7 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
  - 13.8 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 3 and the dependencies between each.

## **ANNEX 3: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION**

1. The Supplier shall:
  - 13.9 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
    - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
    - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 13.9(a) of this Annex 3 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
    - (c) involve or could reasonably be considered to involve CNI;
  - 13.10 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 24

### CONDUCT OF CLAIMS

## 1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the

Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2 SENSITIVE CLAIMS**

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

## **3 RECOVERY OF SUMS**

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

## **4 MITIGATION**

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

# **MODEL AGREEMENT SERVICES SCHEDULES**

## **SCHEDULE 25**

### **STAFF TRANSFER**

## Staff Transfer

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Former Supplier”** a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
- “New Fair Deal”** the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:
- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
  - (b) any similar pension protection in accordance with the Annexes **Error! Reference source not found.-Error! Reference source not found.** inclusive to **Error! Reference source not found.** of this Schedule as notified to the Supplier by the Authority;
- “Notified Sub-contractor”** a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
- “Old Fair Deal”** HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”* issued in June 2004;
- “Replacement Sub-contractor”** a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of <b>Error! Reference source not found.</b> and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
<b>“Service Transfer”</b>	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;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex B2 ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex B2 from time to time.
<b>“Statutory Schemes”</b>	
<b>“Supplier's Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Supplier's Provisional Supplier Personnel List”</b>	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;

<b>“Transferring Authority Employees”</b>	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Supplier Employees”</b>	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
<b>“Transferring Supplier Employees”</b>	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## **2 INTERPRETATION**

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

## **PART A: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made

pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion, or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

### **3 PROCUREMENT OBLIGATIONS**

- 3.1 Where in this 0 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 B: EMPLOYMENT EXIT PROVISIONS**

### **1. PRE-SERVICE TRANSFER OBLIGATIONS**

3.2 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

3.3 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).

3.4 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 3.2 and 3.3 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

3.5 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 3.2 and 3.3 shall be true and accurate in all material respects at the time of providing the information.

3.6 From the date of the earliest event referred to in Paragraph 3.2(a), 3.2(b) and 3.2(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise

and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

3.7 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to **Error! Reference source not found.** (*Pensions*) of this **Error! Reference source not found.** (*Staff Transfer*)(as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

- 3.8 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.

#### **4 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 4.1 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.
- 4.2 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.

4.3 Subject to Paragraph 4.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the

extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

4.4 The indemnities in Paragraph 4.3 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.

4.5 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.

4.6 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.

4.7 If after the 15 Working Day period specified in Paragraph 4.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

4.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 4.5 to 4.7, 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 4.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.9 The indemnity in Paragraph 4.8:

- (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 4.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.
- 4.10 If any such person as is described in Paragraph 4.5 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 4.5 to 4.7, such person shall be treated as a Transferring Supplier Employee.
- 4.11 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.
- 4.12 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.
- 4.13 Subject to Paragraph 4.14, 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.

4.14 The indemnities in Paragraph 4.13 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 B1: LIST OF NOTIFIED SUB-CONTRACTORS**

## **ANNEX B2: STAFFING INFORMATION**

## **EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 5 *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
- 6 *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 7 *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

<b>EMPLOYEE DETAILS &amp; KEY TERMS</b>							
<b>Details</b>	<b>Job Title</b>	<b>Grade / band</b>	<b>Work Location</b>	<b>Age</b>	<b>Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?</b>	<b>Continuous service date (dd/mm/yy)</b>	<b>Date employment started with existing employer</b>
<b>Emp No 1</b>							
<b>Emp No 2</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							

**EMPLOYEE DETAILS & KEY TERMS**

<b>Details</b>	<b>Contract end date (if fixed term contract or temporary contract)</b>	<b>Contractual notice period</b>	<b>Contractual weekly hours</b>	<b>Regular overtime hours per week</b>	<b>Mobility or flexibility clause in contract?</b>	<b>Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector</b>	<b>Any collective agreements?</b>
<b>Emp No 1</b>							
<b>Emp No 2</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								

**CONTRACTUAL PAY AND BENEFITS**

<b>Details</b>	<b>Any existing or future commitment to training that has a time-off or financial implication</b>	<b>Car allowance (£ per year)</b>	<b>Lease or company car details</b>	<b>Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)</b>	<b>Private medical insurance (please specify whether single or family cover)</b>	<b>Life assurance (xSalary)</b>	<b>Long Term Disability / PHI (% of Salary)</b>	<b>Any other benefits in kind</b>
<b>Emp No 1</b>								
<b>Emp No 2</b>								
<b>Emp No</b>								
<b>Emp No</b>								
<b>Emp No</b>								
<b>Emp No</b>								
<b>Emp No</b>								

**CONTRACTUAL PAY AND BENEFITS**

<b>Details</b>	<b>Annual leave entitlement (excluding bank holidays)</b>	<b>Bank holiday entitlement</b>	<b>Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)</b>	<b>Maternity or paternity or shared parental leave entitlement and pay</b>	<b>Sick leave entitlement and pay</b>	<b>Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

<b>PENSIONS</b>						
<b>Details</b>	<b>Employee pension contribution rate</b>	<b>Employer pension contribution rate</b>	<b>Please provide the name of the pension scheme and a link to the pension scheme website</b>	<b>Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?</b>	<b>If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?</b>	<b>Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPA, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

**PENSIONS**

Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value, or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 26

### KEY PERSONNEL

## **Key Personnel**

1. For Supplier Key Personnel refer to Section 'E.4 Staffing' of Schedule 4.1 Supplier Solution.

# MODEL AGREEMENT FOR SERVICES SCHEDULES

## SCHEDULE 27

### PROCESSING PERSONAL DATA

## 1 Processing Personal Data

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
- 1.2 The contact details of the Authority's Data Protection Officer are: **Emma Wharram. Emma.wharram@education.gov.uk**
- 1.3 The contact details of the Supplier's Data Protection Officer are: **Chontell Braceland as (CRM and Data Manager). Ultimate responsibility is Amrit Singh as Chief Operating Officer - Contact Name: Amrit Singh, Role: Chief operating Officer, Email Address: amrits@nasen.org.uk**
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<b>The Authority is Controller and the Supplier is Processor</b> The Parties acknowledge that in accordance with Clause 23.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:
Duration of the processing	01/04/2022 – 31/03/2025
Nature and purposes of the processing	Nature of processing includes collection, storage, usage of data to invite/ inform service users of training/events under the contract and/ or accessing resources published or accessible via a website and/ or learning management system under the contract, erasure, and destruction in line with GDPR regulations.  Purpose of collecting/holding/ using data is to support individuals involved in SEND provision to children and young adults to meet the needs of those individuals in lien with the aims of the tendered DfE contract.
Type of Personal Data	Surname, first name, address, email address, telephone number and job role/ title
Categories of Data Subject	Service users, attendees on training events or training programmes, newsletter recipients, website users.
Plan for return and destruction of the data once the processing is complete	Data will be held by nasen for the period of the contract with the DfE except where a request is received from a service user to remove their data from our systems under a right to be forgotten/ erasure request.

UNLESS requirement under union or member state law to preserve that type of data	Sign up processes detail the purpose for which data is being requested and individual's rights to be removed from the database when required.
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## ANNEX 1: CONTROLLER TO CONTROLLER STANDARD CONTRACTUAL CLAUSES

**Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers) Data transfer agreement between**

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(name)

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(address and country of establishment)

hereinafter “data exporter”)

and

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(name)

---

(address and country of establishment)

hereinafter “data importer”

each a “party”; together “the parties”.

### Definitions

For the purposes of the clauses:

- a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) “the data exporter” shall mean the controller who transfers the personal data;
- c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
- d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

## **I. Obligations of the data exporter**

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed, and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## **II. Obligations of the data importer**

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be

obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.

- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, at its option, in accordance with:
  - (i) the data protection laws of the country in which the data exporter is established, or

- (ii) the relevant provisions<sup>1</sup> of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data<sup>2</sup>, or
- (iii) the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: \_\_\_\_\_

Initials of data importer: \_\_\_\_\_;

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - (i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

### III. Liability and third party rights

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party

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<sup>1</sup> "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

<sup>2</sup> However, the provisions of Annex A.5 concerning rights of access, rectification, deletion, and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected

for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.

- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

#### **IV. Law applicable to the clauses**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

#### **V. Resolution of disputes with data subjects or the authority**

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

## VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
- (i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
  - (ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
  - (iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
  - (iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
  - (v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.
- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.

- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

**VII. Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

**VIII. Description of the Transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated: \_\_\_\_\_

\_\_\_\_\_

FOR DATA IMPORTER

.....  
 .....  
 .....

\_\_\_\_\_

FOR DATA EXPORTER

.....  
 .....  
 .....

## ANNEX A

### DATA PROCESSING PRINCIPLES

- 1) Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
- 2) Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant, and not excessive in relation to the purposes for which they are transferred and further processed.
- 3) Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer) unless such information has already been given by the data exporter.
- 4) Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
- 5) Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment, or deletion. Notification of any rectification, amendment, or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data

subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.

- 6) Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
- 7) Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
- 8) Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
  - a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and  
  
(ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

Or

- b) where otherwise provided by the law of the data exporter.

ANNEX B

**DESCRIPTION OF THE TRANSFER**

*(To be completed by the parties)*

**Data Subjects**

The personal data transferred concern the following categories of data subjects:

.....  
.....  
.....  
.....

**Purposes of the transfer(s)**

The transfer is made for the following purposes:

.....  
.....  
.....  
.....

**Categories of data**

The personal data transferred concern the following categories of data:

.....  
.....  
.....  
.....

**Recipients**

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

.....  
.....  
.....  
.....

**Sensitive data** (if appropriate)

The personal data transferred concern the following categories of sensitive data:

.....  
.....

.....  
.....

**Data protection registration information of data exporter (where applicable)**

.....  
.....

**Additional useful information (storage limits and other relevant information)**

.....  
.....

**Contact points for data protection enquiries**

**Data importer**

**Data exporter**

.....  
.....  
.....

.....  
.....  
.....

## ANNEX 2: CONTROLLER TO PROCESSOR STANDARD CONTRACTUAL CLAUSES

### STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: .....

Address: .....

Tel. ....; fax .....; e-mail: .....

Other information needed to identify the organisation

.....

(the data **exporter**)

And

Name of the data importing organisation: .....

Address: .....

Tel. ....; fax .....; e-mail: .....

Other information needed to identify the organisation

.....

(the data **importer**)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

#### Clause 1

##### Definitions

For the purposes of the Clauses:

- a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>3</sup>;
- b) 'the data exporter' means the controller who transfers the personal data;

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<sup>3</sup> Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

- c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### Clause 4 **Obligations of the data exporter**

The data exporter agrees and warrants:

- a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- e) that it will ensure compliance with the security measures;

- f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5  
**Obligations of the data importer<sup>4</sup>**

The data importer agrees and warrants:

- a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its

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<sup>4</sup> Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements, or anti-money-laundering reporting requirements.

obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

- j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## Clause 6 **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## Clause 7 **Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against its third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8  
**Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9  
**Governing law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely .....

Clause 10  
**Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11  
**Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes

the same obligations on the sub-processor as are imposed on the data importer under the Clauses<sup>5</sup>. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely .....
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

#### Clause 12

#### **Obligation after the termination of personal data-processing services**

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

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<sup>5</sup> This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

**On behalf of the data exporter:**

Name (written out in full): .....  
Position:.....  
Address: .....  
Other information necessary in order for the contract to be binding (if any):

Signature .....

(stamp of organisation)

**On behalf of the data importer:**

Name (written out in full): .....  
Position:.....  
Address: .....  
Other information necessary in order for the contract to be binding (if any):

Signature .....

(stamp of organisation)

Appendix 1  
**to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

**Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

.....  
.....  
.....

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

.....  
.....  
.....

**Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

.....  
.....  
.....

**Categories of data**

The personal data transferred concern the following categories of data (please specify):

.....  
.....  
.....

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

.....  
.....  
.....

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

.....

.....  
.....

**DATA EXPORTER**

Name: .....

Authorised Signature .....

**DATA IMPORTER**

Name: .....

Authorised Signature .....

Appendix 2  
**to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

.....  
.....  
.....  
.....