

CONTRACT FOR THE PROVISION OF  
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termination or expiry of this Agreement;

- (n) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (o) generating a computer listing of the Source Code of all Specially Written Software, including configuration details associated with all applications and infrastructure, in a form and on media reasonably requested by the Authority;
- (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 a test server (by obscuring the relevant data, setting up new test End Users and switching the old database with the new production database via direct internet connection without disruption to End Users), with the appropriate log file path encryption to the Authority's and/or the Replacement Supplier's operations staff 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 twelve (12) 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 Goods and 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 Goods and Services within three (3) Working Days of receipt;
- (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 Goods and Services to the Authority and/or the Replacement Supplier:
  - (i) to information and Documentation relating to the services transferring to the Authority and/or the Replacement Supplier 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 Goods and Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (aa) knowledge transfer Services, including:

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- (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 Goods and Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Goods and 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 Goods and Services and who are still employed or engaged by the Supplier or its Sub-contractors.
- 2. The Supplier shall:
  - (a) provide a documented plan relating to the training matters referred to in Paragraph 1(m) of this Annex 1 for agreement by the Authority at the time of termination or expiry of this Agreement;
  - (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1(p), providing skills and expertise of a suitable standard; and
  - (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1(x) of this Annex 1, providing skills and expertise of a reasonably acceptable standard.
- 3. 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 Goods and Services, the change management process and other standards and Procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 4. The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1(aa) of this Annex 1 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.
- 5. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the 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:

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- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 5 of this Annex 1 shall:
  - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**ANNEX 2: DRAFT ETHICAL WALL AGREEMENT**

[THE AUTHORITY]

**and**

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

This Agreement is dated 20[ ] and is entered into between

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE ACTING AS PART OF THE CROWN THROUGH THE DEPARTMENT OF HEALTH AND SOCIAL CARE** (the "**Authority**") of 39 Victoria Street, Westminster, London, SW1H 0EU; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

**BACKGROUND**

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

**IT IS AGREED:**

**1 DEFINITIONS AND INTERPRETATION**

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

**"Affiliate"** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

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

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

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

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

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

**"Contract"** means the written contract for the provision of information management services dated [ ] between the Authority and the Counterparty; "Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

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

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

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

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

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

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

**"Parties"** means the Authority and the Counterparty;

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

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**"Purpose"** has the meaning given to it in recital (B) to this Agreement;

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

**"Third Party"** means any person who is not a Party and includes Other Affiliates and Other Bidders.

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

## **2 ETHICAL WALLS**

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
  - (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
  - (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
  - (c) where there is or is likely to be a conflict of interest or the perception of a conflict of

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interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in Clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT

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Process).

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- (a) the Counterparty or any Affiliate or Representative; or
  - (b) any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in Clause 2; and
  - (b) in the event of such breach by the Counterparty of any of its obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3 SOLE RESPONSIBILITY**

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

### **4 WAIVER AND INVALIDITY**

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in

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relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

**5 ASSIGNMENT AND NOVATION**

- 5.1 Subject to Clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

**6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

**7 TRANSPARENCY**

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

**8 NOTICES**

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service

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

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

	Counterparty	Authority
Contact		
Address		
Email		

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

## 9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall

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not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

**10 TERM**

Each party's obligations under this Agreement shall continue in full force and effect for period of **11** years from the Effective Date.

**11 GOVERNING LAW AND JURISDICTION**

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

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

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

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**SCHEDULE 8.6**

**SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING**

**PART A. SERVICE CONTINUITY PLAN**

**1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii) of Part A of this Schedule;
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(b) of Part A of this Schedule;
<b>“Department”</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(a) Government Department; or</p> <p>(b) Non-Ministerial Department;</p>
<b>“Disaster”</b>	<p>the occurrence of one or more events including:</p> <p>(a) a Data Loss Event, fire, flood, theft, impact, malicious damage or natural disaster or any other event which the Authority reasonably considers to be a disaster, which, either separately or cumulatively, mean that the Goods and/or Services (or its physical components), or a material part of the Goods and/or Services (or its physical components) will be unavailable or which is reasonably anticipated will mean that the provision of the Goods and/or Services or a material part of the provision of the Goods and/or Services will be unavailable and where the provision of the Goods and/or the performance of the Services cannot be recovered using the facilities generally used by the Supplier to provide the Goods and Services; and</p> <p>(b) any other event that in the reasonable opinion of the Authority amounts to a disaster;</p>
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii) of Part A of this Schedule;
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the provision of the Goods and 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) of Part A of this Schedule;

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- “Review Report”** has the meaning given in Paragraphs 7.2(a) to 7.2(c) of Part A of this Schedule;
- “Service Continuity Plan”** means the plan prepared pursuant to Paragraph 2 of Part A of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan; and
- “Supplier’s Proposals”** has the meaning given in Paragraph 7.2(c) of this Part A of this Schedule.

**2 SERVICE CONTINUITY PLAN**

- 2.1 Within forty (40) Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
- (a) ensure continuity of the business processes and operations supported by the provision of Goods and Services following any failure or disruption of any element of the provision of Goods and 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 provision of Goods and Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall be:
- (a) 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 of Part A of this Schedule.
- 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 twenty (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 twenty (20) Working

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Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 of Part A of this Schedule shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any Dispute for resolution in accordance with Paragraph 2 of Schedule 8.3 (*Dispute Resolution Procedure*) at any time.

- 2.5 The Supplier shall assist the Authority with any Governmental reporting requirements, including those associated with the Financial Distress Support provisions as set out in Paragraph 2.6 of Schedule 7.4 (*Financial Distress*). The Supplier shall also identify in the Service Continuity Plan the assistance it will be providing to the Authority in relation to the Financial Distress Support document.
- 2.6 The Supplier shall ensure that all elements of the Service Continuity Plan shall include and integrate applicable provisions and processes from the Key Sub-contractors and Sub-contractors equivalent service continuity plans where such Key Sub-contractors and Sub-contractors are providing Goods and/or Services under this Agreement.
- 2.7 The Supplier shall as soon as reasonably practicable and in any event no later than twenty (20) Working Days from the Effective Date deliver to the Authority its own service continuity plan (including sub-plans that cover its own: business continuity plan, disaster recovery plan and insolvency continuity plan) in respect of its own business.

**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 provision of the Goods and Services and any goods and services provided to the Authority by an Other Supplier;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Other Supplier 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 Suppliers 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 and phone) 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; identification of: (A) any potential single points of failure which breach the Key Performance Indicators and Subsidiary Performance Indicators, as applicable, in Schedule 2.2 (Performance Levels); (B) the processes for managing the risks arising therefrom; and (C) the steps to be taken by the Supplier to ensure that there are no such single points of failure;
  - (ii) identification of risks arising from the interaction of the Goods and Services with the goods and services provided by an Other Supplier;
  - (iii) identification of risks arising from an Insolvency Event of the Supplier, any Key

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Sub-contractors and/or Supplier Group member; and

- (iv) 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 Authority 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 Authority Data loss and to preserve Authority 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 Goods and Services are provided in accordance with this Agreement at all times, including 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, all relevant Standards contained in Schedule 2.3 (Standards) and Schedule 2.4 (Security Management), as applicable 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 provision of the Goods and Services, to the business processes facilitated by and the business operations supported by the provision by the Supplier of the Goods and 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 Default 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 provision by the Supplier of the Goods and Services remain supported and to ensure continuity of the business operations supported by the provision of the Goods and Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities

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that may be adopted in the event of a failure in or disruption to the provision of the Goods and Services; and

- (b) the steps to be taken by the Supplier upon resumption of the provision of the Goods and 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 provision of the Goods and 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 provision of the Goods and 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 provision by the Supplier of the Goods and 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 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;

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- (ix) Service recovery Procedures; and
- (x) steps to be taken upon resumption of the provision of the Goods and Services to address any prevailing effect of the failure or disruption of the provision of the Goods and 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 as set out in Schedule 2.3 (*Standards*) and/or Schedule 2.4 (*Security Management*), as applicable, 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 Goods and Services through continued provision of the Goods and 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 Goods and 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 provision of the Goods and 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 provision of the Goods and 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):

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- (a) as a minimum once every six (6) months
  - (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9 of Part A of this Schedule;
  - (c) within fourteen (14) days of a Financial Distress Event;
  - (d) within thirty (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)) of Part A of this Schedule 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 of Part A of this Schedule 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 provision of the Goods and Services or any underlying business processes and operations facilitated by or supported by the provision of the Goods and 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 twenty (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 provision of the Goods and 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 twenty (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

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revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 of Part A of this Schedule and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any Dispute 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 provision of the Good and Services, which has occurred without the prior knowledge of the Supplier.

**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 of Part A of this Schedule, 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:

- (a) where there has been any change to the provision of the Goods and Services or any underlying business processes; or
- (b) 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 (as agreed in advance with the Authority) 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. 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 twenty (20) Working Days of the conclusion of each Test, provide to the Authority a report setting out:

- (a) the outcome of the Test;
- (b) any failures in the 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.

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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 provision of the Goods and Services or as otherwise reasonably requested by the Authority.

**9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

9.1 If a loss of any critical part of the Service or a Disaster occurs, the Supplier shall:

- (a) 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
- (b) inform the Authority promptly of such invocation.

9.2 In all other instances the Supplier shall invoke or Test the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

9.3 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 where an Insolvency Event of:

- (a) a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Goods and Services; and/or
- (b) the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

**10 REMEDIES**

10.1 Without prejudice to any other right or remedy of the Authority under this Agreement, where the Supplier fails to invoke or properly put in place the Service Continuity Plan (or any part thereof) or fails to comply with the provisions of this Schedule or the Service Continuity Plan (or any part thereof), such failure shall constitute a material Default and the Authority shall be entitled to:

- (a) notify the Supplier to comply with the Rectification Plan Process pursuant to Clause 28.2(a) (*Rectification Plan Process*); or
- (b) terminate the Agreement.

**PART B. CORPORATE RESOLUTION PLANNING**

**11 Service Status and Supplier Status**

- 11.1 This Agreement is a Critical Service Contract.
- 11.2 The Supplier shall notify the Authority in writing within five (5) Working Days of the Effective Date and throughout the Term within one hundred and twenty (120) days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

**12 Provision of Corporate Resolution Planning Information**

- 12.1 Paragraphs 12 to 13 of Part B of this Schedule shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 11.1 of Part B of this Schedule or the Supplier is or becomes a Public Sector Dependent Supplier.
- 12.2 Subject to Paragraphs 12.6, 12.10 and 12.11 of Part B of this Schedule:
- (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority with the CRP Information within sixty (60) days of the Effective Date; and
  - (b) except where it has already been provided in accordance with Paragraph 12.2(a) of Part B of this Schedule, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority with the CRP Information within sixty (60) days of the date of the Relevant Authority's request
- 12.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 12.2, 12.8 and 12.9 of Part B of this Schedule:
- (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 Sector/CNI Contract Information and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
  - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;
  - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
  - (e) complies with the requirements set out at Annex 1 (Group Structure Information and Resolution Commentary) and Annex 2 (UK Public Sector/CNI Contract Information) respectively of this Schedule.
- 12.4 Following receipt by the Relevant Authority of the CRP Information pursuant to Paragraphs 12.2, 12.8 and 12.9 of Part B of this Schedule, the Authority and the Supplier shall:

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- (a) discuss in good faith the contents of the CRP Information with the Supplier; and
  - (b) no later than sixty (60) days after the date on which the CRP Information was delivered by the Supplier either:
    - (i) provide an Assurance to the Supplier that the Relevant Authority approves the CRP Information; or
    - (ii) that the Relevant Authority rejects the CRP Information.
- 12.5 If the Relevant Authority rejects 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 comments, and shall re-submit the CRP Information to the Relevant Authority for approval within thirty (30) days of the date of the Relevant Authority's rejection. The provisions of Paragraphs 12.3 to 12.5 of Part B of this Schedule shall apply again to any resubmitted CRP Information provided that either Party may refer any Dispute for resolution by the Dispute Resolution Procedure at any time.
- 12.6 Where the Supplier 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 12.2 of Part B of this Schedule if it provides a copy of the Valid Assurance to the Relevant Authority on or before the date on which the CRP Information would otherwise have been required.
- 12.7 An Assurance shall be deemed Valid for the purposes of Paragraph 12.6 of Part B of this Schedule if:
- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed since it was issued and no more than eighteen (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 on which the CRP Information was provided.
- 12.8 Subject to Paragraph 12.6 of Part B this Schedule, 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 12.8(c) of Part B of this Schedule its initial CRP Information) to the Relevant Authority:
- (a) within fourteen (14) days of the occurrence of a Financial Distress Event (along with any additional highly Confidential Information no longer exempted from disclosure under Paragraph 12.11 of Part B of this Schedule) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Distress*)
  - (b) within thirty (30) days of a Corporate Change Event unless not required pursuant to Paragraph 12.10 of Part B of this Schedule;

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- (c) within thirty (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 12.10 of Part B of this Schedule; or
  - (ii) none of the credit rating agencies specified at Paragraph 12.10 of Part B of this Schedule hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within six (6) months after each Accounting Reference Date or within fifteen (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 12.8(a) 12.8(b) or 12.8(c) of Part B of this Schedule since the most recent Accounting Reference Date (being no more than twelve (12) months previously) within the timescales that would ordinarily be required for the provision of that Information under this Paragraph 12.8(d); or
  - (ii) unless not required pursuant to Paragraph 12.10 of Part B of this Schedule.
- 12.9 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 12.8(a) to (d) of Part B of this Schedule, the Supplier shall provide at the request of the Relevant Authority and within the applicable timescales for each event as set out in Paragraph 12.8 of Part B of this Schedule (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority.
- 12.10 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 the CRP Information unless or until either
- (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Distress*)) or
  - (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 12.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 12.8 of Part B of this Schedule.
- 12.11 Subject to Paragraph 14 of Part B of this Schedule, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that Information with the Relevant Authority, 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 to the extent required under Paragraph 12.8 of Part B of this Schedule.
- 13 **Termination Rights**
- 13.1 The Authority shall be entitled to terminate this Agreement under Clause 34.1(c) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 12 of Part B of this Schedule and either:
- (a) the Supplier fails to provide the CRP Information within four (4) months of the Effective

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Date if this is a Critical Service Contract or otherwise within four (4) months of the Relevant Authority's request; or

- (b) the Supplier fails to obtain an Assurance from the Relevant Authority within four (4) months of the date that it was first required to provide the CRP Information under this Agreement.

**14 Confidentiality and usage of CRP Information**

- 14.1 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.
- 14.2 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 14.1 of Part B of this Schedule and Clause 21 (*Authority Data and Security Requirements*).
- 14.3 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 pursuant to Paragraph 12 of Part B of this Schedule subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.
- 14.4 Where the Supplier is unable to procure consent pursuant to Paragraph 14.3 of Part B of this Schedule, 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
- 14.5 The Supplier shall provide the Relevant Authority with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

**ANNEX 1: GROUP STRUCTURE AND RESOLUTION COMMENTARY**

- 1 The Supplier shall:
  - 1.1 provide sufficient Information to allow the Relevant Authority to understand the implications on the Supplier Group's and Other Consortium Members' UK Public Sector Business and CNI contracts listed pursuant to Annex 2 of this Schedule if the Supplier or another member of the Supplier Group or any Other Consortium Member is subject to an Insolvency Event.
  - 1.2 ensure that the Information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group and the Other Consortium Members; and
  - 1.3 provide full details of the importance of each member of the Supplier Group and any Other Consortium Member to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 of this Schedule and the dependencies between each.

**ANNEX 2: UK PUBLIC SECTOR/CNI CONTRACT INFORMATION**

- 1 The Supplier shall:
  - 1.1 provide details of all agreements held by members of the Supplier Group or any Other Consortium Members where those agreements are for goods, services or works provision and:
    - (a) are with any UK public sector bodies including: any Central Government Body and their arms-length bodies and agencies, non- departmental public bodies, any NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
    - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 2 and where the member of the Supplier Group or the Other Consortium Member 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; and
  - 1.2 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.

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**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

**1 INDEMNITIES**

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2 of this Schedule, 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 of this Schedule, 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 of this Schedule, the Indemnifier shall:
- (a) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (b) not bring the name of the Beneficiary into disrepute;
  - (c) 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) 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 the Indemnifier:
- (a) is not entitled to take conduct of the Claim in accordance with Paragraph 1.3 of this Schedule;
  - (b) fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (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) fails to comply in any material respect with the provisions of Paragraph 1.4 of this Schedule.

**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

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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 of this Schedule 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 repay to the Indemnifier the lesser of the amount:

- (a) 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) paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity

**4 MITIGATION**

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a Claim against the other Party pursuant to the indemnities in this Schedule.