

DATED 21/08/2024

THE SECRETARY OF STATE FOR (1)
DEFENCE

AND

CONSTELLIA PUBLIC LIMITED (2)

NEUTRAL VENDOR FRAMEWORK
AGREEMENT FOR INNOVATION

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THIS AGREEMENT is made on 21/08/2024

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) **CONSTELLIA PUBLIC LIMITED**, registered in England (number 08664789), whose registered office is at 43 Berkley Square, London W1J 5FJ (the “**Neutral Vendor**”)

(each a “**Party**” and together the “**Parties**”).

BACKGROUND:

- (A) The Authority is seeking to set up a single supplier framework under which Contracting Authorities can procure Specialist Technology Goods and Services.
- (B) On 6 November 2023 the Authority advertised in Find A Tender (reference 2023/S 000-032749) and the Defence Sourcing Portal (reference 709634450) inviting prospective providers to submit proposals to manage a supply chain of specialist Technology Providers capable of delivering Specialist Technology Goods and Services to Contracting Authorities.
- (C) On the basis of the Neutral Vendor’s response to the advertisement and a subsequent tender process, the Authority selected the Neutral Vendor as its preferred single provider of the Services.
- (D) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

1 Definitions and Interpretation

1.1 In this Agreement (unless the context otherwise requires):

- 1.1.1 the terms and phrases defined in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.2 the acronyms set out in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
- 1.1.4 the singular includes the plural and vice versa;
- 1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
- 1.1.6 the expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;
- 1.1.7 unless stated to the contrary, any reference to this Agreement or to any other document shall include any variation, amendment or supplement to such document;

- 1.1.8 references to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument;
- 1.1.9 the heading to any provision in this Agreement shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Agreement may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;
- 1.1.11 unless excluded within the terms of this Agreement or where otherwise required by Law:
- (i) references to submission of documents in writing shall include electronic submission;
 - (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Agreement;
 - (iii) a reference in this Agreement to any Clause, part, Paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, Paragraph or Schedule of or Appendix or Annex to this Agreement; and
 - (iv) a reference in this Agreement to any Clause or Paragraph is a reference to the whole of that Clause or Paragraph unless stated otherwise;
- 1.1.12 a reference to a “day” or “days” are references to calendar day(s) unless specified as being Working Day(s);
- 1.1.13 references to a “month” or “months” are references to calendar month(s); and
- 1.1.14 the Schedules, Appendices and Annexes are incorporated in, and shall form part of, this Agreement and the Parties shall comply with such Schedules, Appendices and Annexes.

2 Precedence

- 2.1 If there is any inconsistency between the provisions of this Agreement and the provisions of a Call-Off Contract, or the provisions of the main body of this Agreement and the Schedules, the Appendices and/or the Annexes of this Agreement, or any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:

- 2.1.1 the Call-Off Contract;
- 2.1.2 the main body of this Agreement;

- 2.1.3 Schedule 1 (*Definitions and Acronyms*);
- 2.1.4 Schedule 2 (*Obligations of the Neutral Vendor*);
- 2.1.5 Schedule 4 (*Performance*);
- 2.1.6 the remaining Schedules and their respective Appendices and Annexes other than Schedule 3 (*Neutral Vendor's Proposals*);
- 2.1.7 Schedule 3 (*Neutral Vendor's Proposals*);
- 2.1.8 any other document referred to in the Call-Off Contract; and
- 2.1.9 any other document referred to in this Agreement.

3 Duration¹

- 3.1 In consideration for the payment of the sum of £1 (one pound) by the Authority to the Neutral Vendor, the Neutral Vendor shall:
 - 3.1.1 enter into this Agreement with the Authority; and
 - 3.1.2 not for the duration of the Term withdraw from or amend in any way this Agreement except by agreement in accordance with Schedule 8 (*Change*).
- 3.2 The duration of this Agreement was stated in the Contract Notice.
- 3.3 Subject to Clauses 3.4 to 3.5 (*Duration*) (inclusive), this Agreement and the rights and obligations of the Parties shall take effect on the Effective Date and shall terminate on the earlier of:
 - 3.3.1 the Expiry Date, as the same may be extended pursuant to Clause 3.4 (*Duration*); and
 - 3.3.2 the Termination Date.
- 3.4 In consideration of the Authority agreeing to enter into this Agreement, the Neutral Vendor hereby grants to the Authority the right to (in its absolute discretion) extend the Term by a period of up to twenty-four (24) months ("**Optional Extension**") by giving the Neutral Vendor at least three (3) months' advance notice.
- 3.5 Following the exercise of the Optional Extension pursuant to this Clause 3 (*Duration*) any rights and obligations of the Parties existing under this Agreement prior to the exercise of such Optional Extension shall continue to apply.
- 3.6 The Authority may update this Agreement at any time. The Authority shall notify the Neutral Vendor of any updates to the Agreement in writing. Any updates shall take effect within the time period notified by the Authority to the Neutral Vendor.

4 Exclusivity²

- 4.1 The Neutral Vendor acknowledges that, in entering into this Agreement:

¹ DEFCON 630 (Edn 02/18)

² DEFCON 630 (Edn 02/18)

- 4.1.1 where applicable, quantities referred to Schedule 2 (*Obligations of the Neutral Vendor*) are estimates only and no exclusivity or volume guarantee has been given by the Authority or any other Contracting Authority;
 - 4.1.2 neither the Authority nor any other Contracting Authority shall be bound to accept or pay for any Services other than those actually ordered and/or authorised under the terms of a Call-Off Contract; and
 - 4.1.3 Contracting Authorities (including, for the avoidance of doubt, the Authority) may enter into arrangements with third parties in respect of any or all of the Services.
- 4.2 The Neutral Vendor shall not be entitled to any payment, compensation, damages, costs, Losses and/or expenses arising out of or in connection with the circumstances set out in this Clause 4 (*Exclusivity*).

5 Performance Mechanism

- 5.1 The Parties shall give effect to Schedule 4 (*Performance*).

6 Pricing and Management Levy

- 6.1 The Parties shall give effect to Schedule 5 (*Pricing*).

Management Levy

- 6.2 In consideration of the establishment and award of this Agreement and the management and administration by the Authority of the same, the Authority shall be entitled to introduce and request payment of the Management Levy in accordance with this Clause 6 (*Management Levy*).
- 6.3 Where the Authority intends to introduce the Management Levy, it shall notify the Neutral Vendor how the Management Levy will apply, including:
- 6.3.1 the date on which the Management Levy will commence;
 - 6.3.2 the rate(s) of the Management Levy (which shall be capped at two percent (2%) of the Total Framework Contract Value); and
 - 6.3.3 the Contracting Authorities which the Management Levy shall apply to.
- 6.4 The Management Levy shall not apply to Call-Off Contracts entered into by the Neutral Vendor and a Contracting Authority prior to the date on which the Management Levy commences.
- 6.5 The Management Levy shall be applied to applicable invoices as soon as possible after the date of the notice in Clause 6.3 (*Management Levy*).
- 6.6 The Authority shall be entitled to submit invoices to the Neutral Vendor in respect of the Management Levy due each Quarterly Performance Period based on the Quarterly Spend Report provided pursuant to Schedule 15 (*Reporting and Meetings*).
- 6.7 Unless otherwise agreed in writing, the Neutral Vendor shall pay by BACS (or by such other means as the Authority may from time to time reasonably require) the amount stated in any invoice submitted under Clause 6.6 (*Management Levy*) to such account

as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Neutral Vendor) within thirty (30) days of the date of issue of the invoice.

- 6.8 The Management Levy shall apply to the full Neutral Vendor Fees as specified in each and every Call-Off Contract and shall not be varied as a result of any credit or any reduction in the Neutral Vendor Fees made under any Call-Off Contract.
- 6.9 The Neutral Vendor shall be entitled to incorporate the Management Levy into the Neutral Vendor Fees so as to leave the Neutral Vendor in a no better and no worse financial position than it would have been had the Management Levy not applied.
- 6.10 Interest shall be payable on any late payments of the Management Levy under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

7 Obligations of the Neutral Vendor

7.1 The Neutral Vendor shall:

- 7.1.1 comply with its obligations in Schedule 2 (*Obligations of the Neutral Vendor*);
- 7.1.2 provide the Services from the Effective Date;
- 7.1.3 ensure that the Services are provided and performed in accordance with and, in each case, having due regard to:
 - (i) Good Industry Practice;
 - (ii) all Necessary Consents;
 - (iii) all Guidance;
 - (iv) Law; and
 - (v) this Agreement.
- 7.1.4 provide the Services using efficient business processes and ways of working; and
- 7.1.5 continue to perform all of its obligations under this Agreement and shall not suspend the performance of the Services, notwithstanding:
 - (i) the existence of an unresolved dispute; and/or
 - (ii) any failure by the Authority or a Contracting Authority to pay any sums due.

7.2 The Neutral Vendor shall perform the Services:

- 7.2.1 so as to procure satisfaction of Schedule 2 (*Obligations of the Neutral Vendor*);
- 7.2.2 in accordance with the Neutral Vendor's Proposals as set out in Schedule 3 (*Neutral Vendor's Proposals*); and

7.2.3 in accordance with this Agreement; and

7.2.4 in accordance with each Call-Off Contract.

For the avoidance of doubt, the obligations in Clauses 7.2.1, 7.2.2 and 7.2.3 (*The Neutral Vendor's Obligations*) are independent obligations. In particular:

- (i) the fact that the Neutral Vendor has complied with the Neutral Vendor's Proposals shall not be a defence to an allegation that the Neutral Vendor has not satisfied Schedule 2 (*Obligations of the Neutral Vendor*); and
- (ii) the fact that the Neutral Vendor has satisfied Schedule 2 (*Obligations of the Neutral Vendor*) shall not be a defence to an allegation that the Neutral Vendor has failed to comply with the Neutral Vendor's Proposals.

7.3 The Neutral Vendor shall at its own expense obtain and maintain all Necessary Consents.

7.4 The Neutral Vendor shall ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Neutral Vendor's obligations under this Agreement.

8 Neutral Vendor Warranties and Representations

8.1 The Neutral Vendor warrants and represents that:

8.1.1 it has full capacity and authority to enter into and to perform its obligations under this Agreement and all action necessary on the part of the Neutral Vendor to authorise the execution of and the performance of its obligations under this Agreement has been taken;

8.1.2 this Agreement is executed by its authorised representative;

8.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

8.1.4 at the date of this Agreement the entire share capital in the Neutral Vendor is legally and beneficially owned:

- (i) 80% by Constellia Limited, a company incorporated in England and Wales (with Registered Number 06401989) whose registered office is situated at 43 Berkley Square, London W1J 5FJ; and
- (ii) 20% by Anthony Carr of 12 Egerton Grove, DL5 4RT; and

that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Neutral Vendor;

- 8.1.5 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or any Neutral Vendor Related Party that might affect its ability to perform this Agreement or any Call-Off Contract or Work Order;
- 8.1.6 it maintains all necessary rights, authorisations, licences and consents to enter into and perform its obligations under this Agreement;
- 8.1.7 it will comply with each Call-Off Contract;
- 8.1.8 it does not have any contractual or other obligation, compliance with which shall or is likely to have a material adverse effect on its ability to perform this Agreement or any Call-Off Contract or Work Order;
- 8.1.9 its obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with their respective terms subject to:
- (i) applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally; and
 - (ii) the equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 8.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Neutral Vendor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Neutral Vendor's assets or revenue and as at the Effective Date no Insolvency Event has occurred;
- 8.1.11 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 8.1.12 in entering into this Agreement or any Call-Off Contract or Work Order it has not committed a Prohibited Act;
- 8.1.13 it, nor to the best of its knowledge any Neutral Vendor Related Party nor any of the Neutral Vendor's employees, consultants or agents, have at any time prior to the Effective Date:
- (i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 8.1.14 it shall:

- (i) establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (ii) keep appropriate records of its compliance with its obligations under Clause 8.1.14(i) (*Neutral Vendor warranties*) and make such records available to the Authority on request;
- 8.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 8.1.13 (*Neutral Vendor warranties*), or has reason to believe that it has or any of the Neutral Vendor Related Parties have or any of the Neutral Vendor's employees, consultants or agents have:
 - (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act;
- 8.1.16 all written statements and representations in any written submissions made by the Neutral Vendor as part of the procurement process, its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Neutral Vendor has otherwise disclosed to the Authority in writing prior to the Effective Date; and
- 8.1.17 all DPQQ Responses made by the Neutral Vendor and/or any third party acting on behalf of the Neutral Vendor remain materially true and accurate except to the extent that such DPQQ Responses have been superseded or varied by this Agreement or to the extent that the Neutral Vendor has otherwise disclosed to the Authority in writing prior to the Effective Date.

9 Co-operation

- 9.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Agreement. Neither Party shall be under any obligation to perform any of the other's obligations under this Agreement.
- 9.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in relation to this Agreement.

10 Call-Off Contracts

- 10.1 During the Term Contracting Authorities may place orders for Services from the Neutral Vendor. Services will be procured under this Agreement by a Contracting Authority

and the Neutral Vendor agreeing and executing a Call-Off Contract substantially in the format set out in Schedule 10 (*Call-Off Contracts*).

- 10.2 Each Call-Off Contract shall form a separate binding contract for the provision of Services. Termination or expiry of this Agreement will not impact any Call-Off Contract agreed under it. Each Call-Off Contract will remain effective until it expires or is terminated in accordance with the provisions of such Call-Off Contract.
- 10.3 Each Call-Off Contract shall expressly reference this Agreement and may contain specific terms or conditions additional to those contained in this Agreement or which are at variance to those contained in this Agreement, subject to the agreement of the Neutral Vendor and the relevant Contracting Authority.³
- 10.4 The Neutral Vendor shall not:
 - 10.4.1 enter into a Call-Off Contract with a Contracting Authority (other than the Authority) unless and until the Contracting Authority confirms to the Neutral Vendor that it has entered into an Access Agreement with the Authority and such Access Agreement has not expired or terminated in accordance with the terms of the Access Agreement;
 - 10.4.2 enter into a Call-Off Contract or a Work Order which would cause or result in the Framework Expenditure exceeding the Framework Expenditure Limit;
 - 10.4.3 enter into a Call-Off Contract with a Contracting Authority on or after the Expiry Date or, if earlier, the Termination Date; and
 - 10.4.4 place a Work Order under a Call-Off Contract unless and until it has entered into the Call-Off Contract.
- 10.5 Where a Contracting Authority wishes to place an order for the Services under this Agreement, it shall notify the Neutral Vendor that it wishes to enter into a Call-Off Contract and the Neutral Vendor shall confirm to the Contracting Authority within ten (10) Working Days whether it is able to enter into the Call-Off Contract.
- 10.6 Where the Neutral Vendor confirms that it can enter a Call-Off Contract with the Contracting Authority, the Neutral Vendor shall:
 - 10.6.1 enter into a Call-Off Contract with the Contracting Authority; and
 - 10.6.2 if so requested by the Contracting Authority, undertake a mini-competition between potential Technology Providers.
- 10.7 The Neutral Vendor shall perform each Call-Off Contract in accordance with the Call-Off Contract and this Agreement.
- 10.8 The Neutral Vendor shall undertake such due diligence as it may require to satisfy itself that it is able to comply with its obligations under each Call-Off Contract.
- 10.9 If a Contracting Authority requires the Neutral Vendor to undertake a mini-competition between potential Technology Providers, the Neutral Vendor shall:

³ DEFCON 630 (Edn 02/18)

- 10.9.1 provide such information, support and advice as the Contracting Authority may require;
 - 10.9.2 assist the Contracting Authority in the development of the specification and requirements of the Contracting Authority;
 - 10.9.3 prepare and agree a RFP with the Contracting Authority; and
 - 10.9.4 agree with the Contracting Authority which potential Technology Providers the RFP is to be issued to and issue the RFP to such potential Technology Providers.
- 10.10 Following receipt of RFP Responses, the Neutral Vendor shall provide the Contracting Authority with the RFP Responses. If so requested by the Contracting Authority and subject always to Clause 10.11 (*Call-Off Contracts*), the Neutral Vendor shall evaluate the RFP Responses and provide the Contracting Authority with its assessment of the quality and value for money of each RFP Response and its recommendations.
- 10.11 The Neutral Vendor shall:
- 10.11.1 remain neutral and non-biased at all times when proposing, selecting, engaging and/or appointing Technology Providers and/or evaluating and/or assessing RFP Responses;
 - 10.11.2 not used;
 - 10.11.3 not profit from its relationship with a Technology Provider at the expense of the Authority or the Contracting Authorities;
 - 10.11.4 not accept or receive any direct or indirect pecuniary benefit from its relationship with any Technology Provider in connection with the provision of the Services; and
 - 10.11.5 not form any consortium, joint venture, partnership or other commercial or legal relationship beyond the terms of a Work Order with any Technology Provider in connection with the provision of the Services.
- 10.12 Sub-contracting a Call-Off Contract or issuing a Work Order shall not relieve the Neutral Vendor of any obligation or duty of the Neutral Vendor under this Agreement or the Call-Off Contract. If the Neutral Vendor sub-contracts a Call-Off Contract or issues a Work Order it shall remain responsible for the performance of its obligations under this Agreement and the Call-Off Contract.

11 Prompt payment

- 11.1 Where the Neutral Vendor issues a Work Order to a Technology Provider pursuant to a Call-Off Contract, it shall cause a term to be included in such Work Order providing that:
- 11.1.1 where the Technology Provider submits an invoice to the Neutral Vendor, the Neutral Vendor will consider and verify that invoice in a timely fashion;
 - 11.1.2 the Neutral Vendor shall pay the Technology Provider any sums due under such invoice no later than a period of ten (10) days from the date on which

the Contracting Authority has paid the Neutral Vendor under the Call-Off Contract; and

- 11.1.3 providing that where the Neutral Vendor fails to comply with Clause 11.1.1 (*Prompt Payment*) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed after a reasonable time has passed.

12 Record Keeping⁴

- 12.1 The Neutral Vendor shall maintain all records specified in and connected with this Agreement (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- 12.2 The Neutral Vendor shall also permit access to relevant records that relate to the contractual obligations to supply Services under this Agreement, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- 12.2.1 to enable the National Audit Office to carry out the Authority's statutory audits and to examine and / or certify the Authority's annual and interim report and accounts; and
- 12.2.2 to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 12.3 With regard to the records made available to the Authority under Clause 12.1 (*Record Keeping*), and subject to the provisions of Clause 14 (*Disclosure of Information*), the Neutral Vendor shall permit records to be examined and if necessary copied, by the Authority, or a representative of the Authority, as the Authority may require.
- 12.4 Unless this Agreement specifies otherwise, the records referred to in this Clause 12 (*Record Keeping*) shall be retained for a period of at least six (6) years from:
- 12.4.1 the Expiry Date; or
- 12.4.2 the Termination Date,
- whichever occurs latest.

13 Reporting and Meetings

- 13.1 The Parties shall comply with the provisions of Schedule 15 (*Reporting and Meetings*).
- 13.2 Without prejudice to Schedule 4 (*Performance*) and Schedule 15 (*Reporting and Meetings*) the Authority, a representative of the Authority and any agents or consultants of the Authority (such agents and consultants to be subject to the Neutral Vendor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition)) and with reasonable prior notice (having regard to any co-location working which the Neutral Vendor hereby confirms will require a short notice

⁴ DEFCON 609 (Edn 07/21)

period of no more than one hour), make any audit or check of any aspect of the Neutral Vendor's performance of this Agreement as required by the Authority or where the same shall have been requested by the National Audit Office. The Neutral Vendor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

- 13.3 Without prejudice to Clause 13.2 (*Reporting and Meetings*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Agreement (and for any HM Government purposes as requested by the Authority from time to time with the consent of the Neutral Vendor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Neutral Vendor Deliverables are being provided in accordance with this Agreement.
- 13.4 The Neutral Vendor shall attend meetings at the frequency and times specified in Schedule 15 (*Reporting and Meetings*). Ad-hoc meetings may be called by either Party throughout the Term where a specific need arises and shall be at no additional cost to the Authority. Agreement to attend such meetings shall not be unreasonably withheld.
- 13.5 The Neutral Vendor shall provide the Contract Data Deliverables including the relevant management information identified therein in accordance with the requirements of Schedule 15 (*Reporting and Meetings*). The Authority may reject a Contract Data Deliverable which does not comply with this Agreement. Where the Authority rejects any Contract Data Deliverable, the Neutral Vendor shall resubmit it in accordance with this Agreement within such period as is specified by the Authority.
- 13.6 The submission by the Neutral Vendor and receipt by the Authority of any Contract Data Deliverables or reports on the progress of this Agreement shall not prejudice any rights or obligations of either Party under this Agreement.

Framework Expenditure

- 13.7 The Neutral Vendor shall monitor Framework Expenditure and shall notify the Authority and the Contracting Authorities when Framework Expenditure reaches 80% of the Framework Expenditure Limit.
- 13.8 Subject to Clause 13.9 (*Framework Expenditure*) and Clause 14 (*Disclosure of Information*), the Neutral Vendor shall provide such information in relation to Framework Expenditure as the Authority may reasonably require.
- 13.9 The Neutral Vendor shall treat in confidence each Call-Off Contract and shall not disclose any of the information it receives from any party to a Call-Off Contract other in accordance with the terms of such Call-Off Contract.

14 Disclosure of Information⁵

- 14.1 Subject to Clauses 14.4 to 14.9 (*Disclosure of Information*) each Party:
- 14.1.1 shall treat in confidence all Information it receives from the other;
- 14.1.2 shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Neutral Vendor may disclose Information in

⁵ DEFCON 531 (Edn 09/21)

confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Agreement;

- 14.1.3 shall not use any of that Information otherwise than for the purpose of this Agreement; and
- 14.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Agreement.
- 14.2 The Neutral Vendor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Neutral Vendor by or on behalf of the Authority under or in connection with this Agreement:
 - 14.2.1 is disclosed to its employees and sub-contractors and to Technology Providers, only to the extent necessary for the performance of this Agreement; and
 - 14.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Agreement or any sub-contract or Work Order under it.
- 14.3 The Neutral Vendor shall ensure that its employees are aware of their arrangements for discharging the obligations at Clauses 14.1 and 14.2 (*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 14.4 A Party shall not be in breach of Clauses 14.1, 14.2, 14.6, 14.7 and 14.8 (*Disclosure of Information*) to the extent that either Party:
 - 14.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Agreement;
 - 14.4.2 has the right to use or disclose the Information in accordance with other Clauses of this Agreement; or
 - 14.4.3 can show:
 - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Agreement or any other agreement between the Parties, or any breach by any other party of an obligation of confidentiality;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Agreement;
 - (iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) from its records that the same information was derived independently of that received under or in connection with this Agreement,

provided the relationship to any other Information is not revealed.

14.5 Neither Party shall be in breach of this Clause 14 (*Disclosure of Information*) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 14 (*Disclosure of Information*).

14.6 The Authority may disclose the Information:

14.6.1 to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;

14.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

14.6.3 subject to Clause 14.7 (*Disclosure of Information*) below, to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

14.6.4 subject to Clause 14.7 (*Disclosure of Information*) below, on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Agreement;

14.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement; or

14.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 14 (*Disclosure of Information*).

14.7 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 14.6.3 or 14.6.4 (*Disclosure of Information*) above, the Authority will endeavour to provide the Neutral Vendor with three (3) Working Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 14.6.3 (*Disclosure of Information*) above, if reasonably requested by the Neutral Vendor within two (2) Working Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause 14 (*Disclosure of Information*).

- 14.8 Before sharing any Information in accordance with Clause 14.7 (*Disclosure of Information*) above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.
- 14.9 The Authority shall not be in breach of this Agreement where it can show that any disclosure of Information is made solely and to the extent necessary to comply with FOIA or EIR. To the extent permitted by the time for compliance under FOIA or EIR, the Authority shall consult the Neutral Vendor where the Authority is considering the disclosure of Information under FOIA or EIR and, in any event, shall provide prior notification to the Neutral Vendor of any decision to disclose the Information. The Neutral Vendor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with FOIA or EIR is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of FOIA or EIR. For the avoidance of doubt, nothing in this Clause 14 (*Disclosure of Information*) shall affect the Neutral Vendor's rights at Law.
- 14.10 Nothing in this Clause 14 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.
- 14.11 In accordance with and subject to the terms of Clause 42 (*Third Party Rights*), the Parties confirm and agree that it is intended that this Clause 14 (*Disclosure of Information*) shall be enforceable by each and any of the Authorised Customers to the full extent permitted by law as if they were a party to this Agreement.

15 Publicity and communications with the media

- 15.1 The Neutral Vendor shall not by itself, its employees or agents (and shall ensure that neither its sub-contractors nor Technology Providers shall):
- 15.1.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the provision of the Services or this Agreement, make any press announcements or publicise this Agreement or its contents in any way; or
 - 15.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;
- unless:
- 15.1.3 the Authority has given its prior written consent; or
 - 15.1.4 as otherwise required to comply with Law, provided always that the Neutral Vendor shall, to the extent reasonably practicable, notify the Authority in advance (and provide the Authority with a copy) of the relevant communication, sign, notice or material.
- 15.2 Should the Neutral Vendor wish to release any publicity material or display hardware that arises from this Agreement, the Neutral Vendor must seek the prior approval of the Authority. Publicity material includes open publication in the Neutral Vendor's publicity literature or website or through the media, displays at exhibitions in any country, lectures or symposia, scientific or technical papers, or any other occasion where members of the general public may have access to the information, even if organised or sponsored by the Authority or any other government department.

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

16 Transparency⁶

Transparency Information

- 16.1 Notwithstanding any other term of this Agreement, including Clause 14 (*Disclosure of Information*), the Neutral Vendor understands that the Authority may publish the Publishable Performance Information and the Transparency Information to the general public.
- 16.2 Subject to Clause 16.3 (*Transparency Information*), the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- 16.3 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- 16.4 The Neutral Vendor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in Clauses 16.5 to 16.9 (*Publishable Performance Information*). Where the Authority publishes Transparency Information, it shall:
- 16.4.1 before publishing, redact any information that would be exempt from disclosure if it was the subject of a request for information under FOIA and/or EIR, for the avoidance of doubt, including Sensitive Information;
- 16.4.2 taking into account the Sensitive Information set out in Schedule 9 (*Commercially Sensitive Information (DEFFORM 539A)*), consult with the Neutral Vendor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with FOIA and/or EIR; and
- 16.4.3 present information in a format that assists the general public in understanding the relevance and completeness of the information being

⁶ DEFCON 539 (Edn 01/22)

published to ensure the public obtain a fair view on how this Agreement is being performed.

Publishable Performance Information

- 16.5 Within three (3) months of the Effective Date the Neutral Vendor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 14 (*Publishable Performance Information - Key Performance Indicator Data Report*).
- 16.6 If the Authority rejects any draft Publishable Performance Information the Neutral Vendor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority within five (5) Working Days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the Parties have an agreed version of the Publishable Performance Information.
- 16.7 The Neutral Vendor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in Schedule 14 (*Publishable Performance Information - Key Performance Indicator Data Report*).
- 16.8 Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under Clause 16.6 (*Publishable Performance Information*), shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.9 The requirements of Clauses 16.5 to 16.8 (*Publishable Performance Information*) are in addition to any other reporting requirements in this Agreement.

17 Data Protection

- 17.1 The Parties shall give effect to Schedule 6 (*Data Protection*).

18 Cyber⁷⁸

Definitions

- 18.1 In this Clause 18 (*Cyber*), the following words and expressions shall have the meanings given to them below, except where the context requires a different meaning:

18.1.1 “**Associated Company**” means:

- (i) any associated company of the Neutral Vendor from time to time within the meaning of section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (ii) any parent undertaking or subsidiary undertaking of the Neutral Vendor from time to time within the meaning of section 1162 of the Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

⁷ DEFCON 658 (Edn 10/22)

⁸ The Cyber Risk Profile for this Agreement is very low.

- 18.1.2 “**Cyber Implementation Plan**” means the plan referred to in Clause 18.3.1 (*Neutral Vendor obligations*);
- 18.1.3 “**Cyber Risk Profile**” means the level of cyber risk relating to this Agreement assessed by the Authority or in relation to any Sub-Contract assessed by the Neutral Vendor, in each case in accordance with the Cyber Security Model;
- 18.1.4 “**Cyber Security Incident**” means an event, act or omission which gives rise or may give rise to:
- (i) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
 - (ii) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
 - (iii) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
 - (iv) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
 - (v) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;
- 18.1.5 “**Cyber Security Instructions**” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Agreement issued by the Authority to the Neutral Vendor;
- 18.1.6 “**Cyber Security Model**” or “**CSM**” means the process by which the Authority ensures that MOD Identifiable Information is adequately protected from a Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;
- 18.1.7 “**CSM Risk Assessment Process**” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Agreement and any Call-Off Contract;
- 18.1.8 “**CSM Supplier Assurance Questionnaire**” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Neutral Vendor to demonstrate compliance with this Clause 18 (*Cyber*);
- 18.1.9 “**Data**” means any 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;

- 18.1.10 “**DEFSTAN 05-138**” means the Defence Standard 05-138 as amended or replaced from time to time;
- 18.1.11 “**DEFSTAN 05-0139**” means the Defence Standard 05-0139 as amended or replaced from time to time;
- 18.1.12 “**Electronic Information**” means all information generated, processed, transferred or otherwise dealt with under or in connection with this Agreement, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;
- 18.1.13 “**Good Industry Practice**” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;
- 18.1.14 “**ISN**” means Industry Security Notices issued by the Authority to the Neutral Vendor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;
- 18.1.15 “**JSyCC WARP**” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;
- 18.1.16 “**MOD Identifiable Information**” means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;
- 18.1.17 “**NSA/DSA**” means, as appropriate, the National or Designated Security Authority of the Neutral Vendor that is responsible for the oversight of the security requirements to be applied by the Neutral Vendor and for ensuring compliance with applicable national security regulations;
- 18.1.18 “**Sites**” means any premises from which Services and/or the Specialist Technology Goods and Services are provided in connection with this Agreement or a Call-Off Contract or from which the Neutral Vendor or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the Services and/or the Specialist Technology Goods and Services and/or any sites from which the Neutral Vendor or any relevant Sub-Contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Agreement or a Call-Off Contract;
- 18.1.19 “**Sub-Contract**” means any sub-contract or Work Order awarded directly by the Neutral Vendor as a consequence of or in connection with this Agreement or a Call-Off Contract;
- 18.1.20 “**Sub-Contractor**” means a sub-contractor or Technology Provider who provides the Specialist Technology Goods and Services in connection with this Agreement or a Call-Off Contract but only to the extent that the Sub-

Contractor processes, stores or transmits MOD Identifiable Information under the Sub-Contract; and

- 18.1.21 **“Supplier Cyber Protection Service”** means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

18.2 Authority obligations

18.2.1 The Authority shall:

- (i) determine the Cyber Risk Profile appropriate to this Agreement and notify the Neutral Vendor of the same at the earliest possible date; and
- (ii) notify the Neutral Vendor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Profile relating to this Agreement, which shall be in accordance with Clause 18.4.3 (*Management of Sub-Contractors*).

18.3 Neutral Vendor obligations

18.3.1 The Neutral Vendor shall, and shall procure that Sub-Contractors shall:

- (i) Either;
 - (A) hold a valid Cyber Essentials certification and maintain this for the duration of this Agreement; or
 - (B) demonstrate that they have completed the initial assessment and have developed a plan to achieve Cyber Essentials Certification within six (6) months of:
 - 1) the date of signing this Agreement where a sub-contractor is an existing sub-contractors;
 - 2) becoming a sub-contractor to this Agreement.

Once obtained this must be maintained for the duration of this Agreement.

- (ii) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable.
- (iii) notify the Authority immediately in writing as soon as they become aware of or have any reason to believe that a Cyber Security Incident has or may have taken place. Such notice must provide initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken and providing further information in phases, as full details become available.
- (iv) investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and

minimise the likelihood of any further similar Cyber Security Incidents.

18.4 Management of Sub-Contractors

- 18.4.1 Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Neutral Vendor shall be entitled to rely on the self-certification by the Sub-Contractor of its compliance with this Clause 18 (*Cyber*) in accordance with Clause **Error! Reference source not found.** (*Neutral Vendor obligations*).
- 18.4.2 Where a Sub-Contractor notifies the Neutral Vendor that it cannot comply with the requirements of DEFSTAN 05-138, the Neutral Vendor shall require a Sub-Contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Neutral Vendor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-Contractor. Where the Neutral Vendor has reasonably relied on the Sub-Contractor's self-certification and the Sub-Contractor is subsequently found to be in breach of its obligations, the Neutral Vendor shall not be in breach of this Clause 18 (*Cyber*).
- 18.4.3 The Neutral Vendor shall, and shall require Sub-Contractors to, include provisions equivalent to those set out in the Annex to DEFCON 658 (Cyber Provisions to be included in relevant Sub-Contracts) (Edition 09/21) in all relevant Sub-Contracts and shall notify the Authority in the event that it becomes aware of any material breach of the provisions set out in the Annex to DEFCON 658 (Cyber Provisions to be included in relevant Sub-Contracts) (Edition 09/21) by the Sub-Contractor.

18.5 Records

- 18.5.1 The Neutral Vendor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- (i) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 18 (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Neutral Vendor and/or Sub-Contractor; and
 - (ii) copies of all documents demonstrating compliance with Clause **Error! Reference source not found.** (*Neutral Vendor obligations*) and in relation to any notifications made under Clause **Error! Reference source not found.** and/or investigation under Clause **Error! Reference source not found.** (*Neutral Vendor obligations*).
- 18.5.2 The Neutral Vendor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's Representatives and/or the Neutral Vendor's NSA/DSA such access to those records under Clause

18.5.1(i) (*Records*) as may be required in connection with this Agreement and/or Call-Off Contracts.

18.6 Audit

18.6.1 In the event of a Cyber Security Incident the Neutral Vendor agrees that the Authority and its representatives, in coordination with the Neutral Vendor's NSA/DSA, may conduct such audits as are required to establish:

- (i) the cause of the Cyber Security Incident;
- (ii) the impact of the Cyber Security Incident;
- (iii) the MOD Identifiable Information affected; and
- (iv) the work carried out by the Neutral Vendor to resolve the Cyber Security Incident and to mitigate the effects,
- (v) to ensure that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

18.6.2 In addition to the rights in Clause 18.6.1 (*Audit*), the Authority or its representatives and/or the Neutral Vendor's NSA/DSA, either solely or in any combination, may at any time during a period of six (6) years after termination of this Agreement or the end of the Term whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Neutral Vendor continues to hold MOD Identifiable Information:

- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information; and
- (ii) to review the Neutral Vendor's and/or any Sub-Contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
- (iii) to review any records created during the provision of the Services and/or the Specialist Technology Goods and Services, including but not limited to any documents, reports and minutes which refer or relate to the Services and/or the Specialist Technology Goods and Services for the purposes of Clauses 18.5.1 and 18.5.2 (*Records*).

18.6.3 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Neutral Vendor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Neutral Vendor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Neutral Vendor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Neutral Vendor and/or Sub-Contractor or delay the provision of the Services and/or the Specialist Technology Goods and Services and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

- 18.6.4 The Neutral Vendor shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the Neutral Vendor's NSA/DSA, (and/or their agents or representatives), together the "**Auditors**", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (i) all information requested by the Authority within the permitted scope of the audit;
 - (ii) reasonable access to any Sites controlled by the Neutral Vendor or any Associated Company used in the performance of this Agreement and/or Call-Off Contracts to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Neutral Vendor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - (iii) access to any relevant staff.
- 18.6.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an audit.
- 18.6.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 18 (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 18 (*Cyber*) by the Neutral Vendor in which case the Neutral Vendor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidenced to the Neutral Vendor) in the course of the audit.
- 18.6.7 The Neutral Vendor shall in Sub-Contracts procure rights for the Authority to enforce the terms of this Clause 18.6 (*Audit*) in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 18.7 General
- 18.7.1 On termination or expiry of this Agreement, the provisions of this Clause 18 (*Cyber*) (excepting Clauses **Error! Reference source not found.** and **Error! Reference source not found.** (*Neutral Vendor obligations*)) shall continue in force so long as the Neutral Vendor and/or Sub-Contractor holds any MOD Identifiable Information relating to this Agreement and/or Call-Off Contracts.
- 18.7.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 18 (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.
- 18.7.3 The Neutral Vendor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Neutral Vendor may

request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both, provided always that the Neutral Vendor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Agreement and reasonable in all the circumstances.

18.7.4 Subject to Clause 18.7.3 (*General*) above, where the Neutral Vendor seeks such adjustment or extension, the provisions of Schedule 8 (*Change*) Procedure) shall apply to determine the request for such adjustment or extension. The Neutral Vendor must deliver a Neutral Vendor Change Proposal to the Authority within eight (8) weeks (or other period agreed by the parties) of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or both whether or not the Neutral Vendor Change Proposal is rejected. If the Neutral Vendor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.

18.7.5 The Neutral Vendor shall not recover any costs and/or other Losses under or in connection with this Clause 18 (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the Neutral Vendor elsewhere in this Agreement or otherwise. For the avoidance of doubt, this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Neutral Vendor is able to or has recovered such sums in any other provision of this Agreement or has recovered such costs and/or Losses in other contracts between the Neutral Vendor and the Authority or with other bodies.

19 Limitation of Liability

Unlimited liabilities

19.1 Neither Party limits its liability for:

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

19.1.2 fraud or fraudulent misrepresentation by it or its employees;

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

19.1.4 any liability to the extent it cannot be limited or excluded by Law.

19.2 The financial caps on liability set out in Clauses 19.3 and 19.4 (*Financial limits*) below shall not apply to the following:

- 19.2.1 for any indemnity given by the Neutral Vendor to the Authority under this Agreement, including but not limited to:
- (i) not used;
 - (ii) the Neutral Vendor's indemnity in relation to TUPE at Schedule 7 (*TUPE*);
- 19.2.2 for any indemnity given by the Authority to the Neutral Vendor under the Agreement, including but not limited to:
- (i) not used;
 - (ii) the Authority's indemnity in relation to TUPE under Schedule 7 (*TUPE*);
- 19.2.3 breach by the Neutral Vendor of Schedule 6 (*Data Protection*) and Data Protection Legislation; and
- 19.2.4 to the extent it arises as a result of a default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

Financial limits

- 19.3 Subject to Clauses 19.1 and 19.2 (*Unlimited liabilities*) and to the maximum extent permitted by Law:
- 19.3.1 throughout the Term and until the expiry of termination of all Call-Off Contracts, the Neutral Vendor's total liability in respect of Losses that are caused by defaults of the Neutral Vendor shall in no event exceed:
- (i) not used;
 - (ii) in respect of Clauses 31.14 and 31.15 (*Material Breach*) five million pounds (£5,000,000) in aggregate;
 - (iii) not used;
 - (iv) not used;
- 19.3.2 without limiting Clause 19.2.1 (*Unlimited liabilities*) and subject always to Clauses 19.1 and 19.2 (*Unlimited liabilities*) and Clause 19.3.3 (Financial limits), the Neutral Vendor's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with the Agreement shall be five million pounds (£5,000,000) in aggregate;
- 19.3.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Neutral Vendor's total liability (in aggregate) set out in Clauses 19.3.1 and 19.3.2 (Financial limits) above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 19.3.1 and 19.3.2 (*Financial limits*).

- 19.4 Subject to Clauses 19.1 and 19.2 (*Unlimited liabilities*) and Clause 19.5 (*Financial limits*), and to the maximum extent permitted by Law, the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Agreement shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 19.5 Clause 19.4 (*Financial limits*) shall not exclude or limit the Neutral Vendor's right under the Agreement to claim for the Charges.

Consequential loss

- 19.6 Subject to Clauses 19.1 and 19.2 (*Unlimited liabilities*) and 19.7 (*Consequential loss*), neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 19.6.1 indirect loss or damage;
- 19.6.2 special loss or damage;
- 19.6.3 consequential loss or damage;
- 19.6.4 loss of profits (whether direct or indirect);
- 19.6.5 loss of turnover (whether direct or indirect);
- 19.6.6 loss of business opportunities (whether direct or indirect); or
- 19.6.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

- 19.7 The provisions of Clause 19.6 (*Consequential loss*) shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a default by the Neutral Vendor:

- 19.7.1 any additional operational and administrative costs and expenses arising from the Neutral Vendor's default, including any costs paid or payable by the Authority:
 - (i) to any third party;
 - (ii) for putting in place workarounds for the Services; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Neutral Vendor's Default;
- 19.7.2 any or all wasted expenditure and losses incurred by the Authority arising from the Neutral Vendor's default, including wasted management time;
- 19.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement Services for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated

with such exercise and any increase in the fees for the replacement Services over and above the fees that would have been payable for the relevant Services);

- 19.7.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 19.7.5 damage to the Authority's physical property and tangible assets;
- 19.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third party Intellectual Property Rights or breach of any obligations of confidence;
- 19.7.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Neutral Vendor's default (including the extension or replacement of such contracts);
- 19.7.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 19.7.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Neutral Vendor pursuant to this Agreement.

Invalidity

- 19.8 If any limitation or provision contained or expressly referred to in this Clause 19 (*Limitation of Liability*) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for Loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 19 (*Limitation of Liability*).

Third party claims or Losses

- 19.9 Without prejudice to any other rights or remedies the Authority may have under the Agreement (including but not limited to any indemnity claim at Law), the Authority shall be entitled to make a claim under the Agreement against the Neutral Vendor in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - 19.9.1 arises naturally and ordinarily as a result of the Neutral Vendor's failure to provide the Services or failure to perform any of its obligations under this Agreement; and
 - 19.9.2 is a type of claim or Loss that would have been recoverable under the Agreement if the third party were a party to the Agreement (whether as the Authority or the Neutral Vendor), such claim to be construed as direct Losses for the purpose of the Agreement.

No double recovery

- 19.10 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same Loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable Losses suffered or incurred, including any remedies the Authority may have against any guarantor.

20 Insurance

- 20.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Agreement, the Neutral Vendor shall, for the periods specified in Schedule 17 (*Required Insurances*), take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 17 (*Required Insurances*) and any other insurances required by Law (together the "**Required Insurances**"). The Neutral Vendor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 20.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 20.3 Where specified in Schedule 17 (*Required Insurances*), the Neutral Vendor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Neutral Vendor is legally liable in respect of this Agreement.
- 20.4 The Neutral Vendor shall not (and the Neutral Vendor shall procure that none of its sub-contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 20.5 If the Neutral Vendor is in breach of Clause 20.1 (*Insurance*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Neutral Vendor is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Neutral Vendor.
- 20.6 The Neutral Vendor shall, on the Effective Date and within fifteen (15) Working Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this Clause 20 (*Insurance*) and Schedule 17 (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 20.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Neutral Vendor nor be a waiver of the Neutral Vendor's liability under this Agreement.
- 20.7 The Neutral Vendor shall notify the Authority at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

- 20.8 The Neutral Vendor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which the Neutral Vendor may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Services or this Agreement, the Neutral Vendor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 20.9 Except where the Authority is the claimant party, the Neutral Vendor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident and/or circumstances giving rise to such incident) after any:
- 20.9.1 incident and/or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Agreement and the Required Insurances; and
- 20.9.2 if the incident and/or circumstances may give rise to any claim in connection with this Agreement which may be in excess of the limits of Required Insurances in Schedule 17 (*Required Insurances*).
- 20.10 The Neutral Vendor shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 20.11 Where any Required Insurance requires payment of a premium, the Neutral Vendor shall be liable for the payment of such premium.
- 20.12 Where any Required Insurance referred to in Schedule 17 (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Neutral Vendor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Neutral Vendor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Agreement or otherwise.
- 20.13 The Neutral Vendor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 (including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests) at all times, including when placing, renewing, procuring, maintaining or amending any insurances required by this Agreement and including in circumstances where the Neutral Vendor is required to name the Authority on any such insurances to protect the Authority's separate and distinct interests.

21 Social Value Plan

- 21.1 The Neutral Vendor shall comply with the Social Value Plan as set out at 0 (*Social Value Plan*).
- 21.2 The Neutral Vendor shall review and update the Social Value Plan on annual basis.

22 TUPE

- 22.1 The Parties shall give effect to the provisions of Schedule 7 (*TUPE*).

- 22.2 Where the Neutral Vendor and a Contracting Authority enter into a Call-Off Contract, the Neutral Vendor and the Contracting Authority shall also comply with the provisions of such Call-Off Contract in relation to TUPE.

23 Non-Solicitation

- 23.1 Except in respect of any transfer of staff pursuant to Schedule 7 (*TUPE*), the Neutral Vendor shall not (except with the prior written consent of the Authority) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Authority any person employed or engaged by the Authority in relation to this Agreement or a Call-Off Contract at any time during the Term or for a further period of twelve (12) months after the Expiry Date other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Authority.
- 23.2 The Neutral Vendor shall not re-employ, re-engage, directly or indirectly solicit or entice away any person:
- 23.2.1 previously employed or engaged by the Neutral Vendor at any time during the Term; and
- 23.2.2 whose employment or engagement is transferred to the Authority.

24 Child Labour and Employment Law and Modern Slavery Act⁹

- 24.1 The Neutral Vendor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Agreement is being performed.
- 24.2 The Neutral Vendor agrees to take reasonable efforts to reflect this Clause 24 (*Child Labour and Employment Law and Modern Slavery Act*) in any sub-contract or Work Order that it enters into to satisfy the requirements of this Agreement and to require its sub-contractors and Technology Providers to reflect this Clause in their sub-contracts that they enter into to satisfy the requirements of this Agreement.
- 24.3 The Authority has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The Authority expects the same high standards from all its consultants, suppliers, employees and agents. The Neutral Vendor undertakes and warrants that it:
- 24.3.1 has not committed any offence under the Modern Slavery Act 2015;
- 24.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015, including:
- 24.3.3 due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Agreement; and

⁹ DEFCON 550 (Edn 02/14), with the addition of Clause 24.3

- 24.3.4 preparing and delivering to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business; and
- 24.3.5 shall comply, and shall require its sub-contractors, suppliers, employees and agents to comply, with the Modern Slavery Act 2015 and the Authority's Anti-Slavery and Human Trafficking Policy.
- 24.4 The Neutral Vendor shall notify the Authority immediately if it becomes aware that it, its sub-contractors, suppliers, employees or agents are in breach of Clause 24.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such sub-contractors, suppliers, employees or agents been subject to the same provisions).
- 24.5 If pursuant to Clause 24.4 (*Child Labour and Employment Law and Modern Slavery Act*) the Neutral Vendor notifies the Authority that it has become aware of a breach of Clause 24.3 (*Child Labour and Employment Law and Modern Slavery Act*), the Neutral Vendor shall provide such assistance as the Authority may reasonably require, including responding promptly to the all enquiries of the Authority, co-operating with any investigation and allowing the Authority to audit any books, records and/or other relevant documentation in accordance with this Agreement.
- 24.6 In the event that the Neutral Vendor, its sub-contractors, suppliers, employees or agents are in breach of Clause 24.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such sub-contractors, suppliers, employees or agents been subject to the same provisions), the breach will be considered a Contractor Default for the purpose of this Agreement and the Authority shall be entitled to terminate the whole or any part of this Agreement in accordance with the provisions of Clause 31.1 (*Termination for Default*).

25 Equality¹⁰

- 25.1 The Neutral Vendor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 25.2 Without prejudice to the generality of the obligation in Clause 25.1 (*Equality*) above, the Neutral Vendor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Agreement is being performed.
- 25.3 The Neutral Vendor agrees to take reasonable efforts to secure the observance of the provisions of this Clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Agreement.
- 25.4 The Neutral Vendor agrees to take reasonable efforts to reflect this Clause 25 (*Equality*) in any sub-contract or Work Order that it enters into to satisfy the requirements of this Agreement and to require its sub-contractors and Technology Providers to reflect this Clause 25 (*Equality*) in their sub-contracts that they enter into to satisfy the requirements of this Agreement.

¹⁰ DEFCON 516 (Edn 04/12).

26 **Tax Compliance**¹¹

Warranty

- 26.1 The Neutral Vendor represents and warrants that at the date this Agreement came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Neutral Vendor to notify OOTNC

- 26.2 If, at any point during the performance of this Agreement, an OOTNC occurs, the Neutral Vendor shall:

26.2.1 notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and

26.2.2 promptly provide to the Authority:

- (i) details of the steps which the Neutral Vendor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the OOTNC as the Authority may reasonably require.

- 26.3 For the avoidance of doubt, the obligation at Clause 26.2 (*Duty of the Neutral Vendor to notify OOTNC*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

- 26.4 Not used.

Default

- 26.5 The Authority shall be entitled to terminate this Agreement in the event that:

26.5.1 the warranty given by the Neutral Vendor pursuant to Clause 26.1 (*Warranty*) is materially untrue; or

26.5.2 the Neutral Vendor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 26.2 (*Duty of the Neutral Vendor to notify OOTNC*); or

26.5.3 the Neutral Vendor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

- 26.6 In the event that the Authority terminates this Agreement under Clause 26.5 (*Default*), the Authority shall be entitled to recover from the Neutral Vendor:

26.6.1 the amount of any Loss resulting from the termination; and

26.6.2 any other Loss sustained in consequence of any breach of this Clause 26 (*Tax Compliance*), where this Agreement has not been terminated.

¹¹ DEFCON 670 (Edn 02/17)

Duties of the Authority

- 26.7 In exercising its rights or remedies under this Clause 26 (*Tax Compliance*), the Authority shall:
- 26.7.1 act in a reasonable and proportionate manner taking into account, among other things:
- (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (ii) any remedial action taken by the Neutral Vendor to prevent reoccurrence of the OOTNC; and
- 26.7.2 without prejudice to Clause 26.6 (*Default*), seriously consider, where appropriate, action other than termination of this Agreement to deal with the failure by the Neutral Vendor to comply with this Clause 26 (*Tax Compliance*).

27 Conflict of interest¹²

- 27.1 The Neutral Vendor:
- 27.1.1 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest arises or it is anticipated may arise in the future; and
- 27.1.2 must take steps to ensure that neither the Neutral Vendor nor the Neutral Vendor's Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- 27.2 Where the Neutral Vendor provides a notification in accordance with Clause 27.1.1 (*Conflict of interest*) above the Authority shall inform the Neutral Vendor if, in its reasonable opinion, the subject matter of the notification constitutes a Conflict of Interest.
- 27.3 In the event of a perceived Conflict of Interest the Neutral Vendor shall provide the Authority with such reasonable support and assistance as maybe required in order to enable the Authority to manage the perceived Conflict of Interest.
- 27.4 In the event of an actual or potential Conflict of Interest the Neutral Vendor shall provide the Authority with a written proposal informing the Authority how it intends to manage the Conflict of Interest. Where:
- 27.4.1 the Neutral Vendor notifies the Authority of a Conflict of Interest in accordance with Clause 27.1.1 (*Conflict of interest*) above the written proposal shall be provided by the Neutral Vendor within fifteen (15) Working Days, or such other time as agreed in writing between both Parties, of the confirmation being provided by the Authority in accordance with Clause 27.2 (*Conflict of interest*); or
- 27.4.2 the Authority otherwise becomes aware of an actual or potential Conflict of Interest the written proposal shall be provided by the Neutral Vendor within

¹² DEFCON 540 (Edn 05/23)

fifteen (15) Working Days or such other time as agreed in writing between both Parties, of the Neutral Vendor receiving written notice from the Authority.

27.5 The Authority will notify the Neutral Vendor as to whether it considers the measures proposed by the Neutral Vendor in accordance with Clause 27.4 (*Conflict of interest*) are sufficient to appropriately manage the Conflict of Interest and whether there are any additional reasonable measures that should be put in place.

27.6 The Neutral Vendor shall put into place all measures reasonably required by the Authority to actively manage any Conflict of Interest as notified by the Authority in Writing.

27.7 Where:

27.7.1 the Neutral Vendor has notified the Authority of a potential or actual Conflict of Interest in accordance with Clause 27.1.1 (*Conflict of interest*); or

27.7.2 the Authority has otherwise become aware of an actual or potential Conflict of Interest and has notified the Neutral Vendor in writing,

but, in the reasonable opinion of the Authority there are no sufficient measures available to manage the Conflict of Interest, the Authority may:

(i) terminate this Agreement (in whole or in part) immediately by giving notice in writing to the Neutral Vendor; or

(ii) require the Neutral Vendor exclude a party from a mini-competition.

27.8 If the Neutral Vendor:

27.8.1 fails to notify the Authority of an actual or potential Conflict of Interest in accordance with Clause 27.1.1 (*Conflict of interest*); or

27.8.2 fails to put into place those measures reasonably required by the Authority to manage the Conflict of Interest, as notified to the Neutral Vendor in accordance with Clause 27.6 (*Conflict of interest*),

this shall constitute a material breach of the Neutral Vendor's obligation under this Agreement and the Authority shall have the right to terminate this Agreement (in whole or in part) with Immediate effect by giving written notice to the Neutral Vendor in accordance with Clauses 31.14 and 31.15 (*Material Breach*).

28 Official-Sensitive Security Requirements¹³

28.1 The Neutral Vendor shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the Security Aspects Letter in accordance with the security conditions contained at Schedule 12 (*Security*).

28.2 The Neutral Vendor shall include the requirements and obligations set out in Clause 28.1 (*Official-Sensitive Security Requirements*) in any Work Order placed in connection with or for the purposes of this Agreement which requires disclosure of

¹³ DEFCON 660 (Edn 12/15)

OFFICIAL-SENSITIVE Information to the Technology Provider or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Technology Provider. The Neutral Vendor shall also include in the Work Order a requirement for the Technology Provider to flow the requirements of this Clause 28 (*Official-Sensitive Security Requirements*) to its Technology Providers and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

29 Security Measures

Official Secrets Acts

29.1 The Neutral Vendor shall:

- 29.1.1 take all reasonable steps to make sure that all Employees, agents and sub-contractors of the Neutral Vendor and Technology Providers engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Agreement;
- 29.1.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable by any other Law); and
- 29.1.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Neutral Vendor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Agreement.

Security measures

29.2 Unless it has the written authorisation of the Authority to do otherwise, neither the Neutral Vendor nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to, or acquired by, a person in any of the following categories:

- 29.2.1 who is not a British citizen;
- 29.2.2 who does not hold the appropriate authority for access to the protected matter;
- 29.2.3 in respect of whom the Authority has notified the Neutral Vendor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- 29.2.4 who is not an Employee of the Neutral Vendor; or
- 29.2.5 who is an Employee, agent or sub-contractor of the Neutral Vendor or a Technology Provider and has no need to know the information for the proper performance of this Agreement.

- 29.3 Unless it has the written authorisation of the Authority to do otherwise, the Neutral Vendor and its Employees shall, both before and after the completion or termination of this Agreement, take all reasonable steps to ensure that:
- 29.3.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Agreement; and
 - 29.3.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.
- 29.4 A decision of the Authority on the question of whether the Neutral Vendor has taken or is taking reasonable steps as required by this Clause 29 (*Security Measures*) shall be final and conclusive.
- 29.5 The Neutral Vendor shall:
- 29.5.1 provide to the Authority:
 - (i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 29.3.2 (*Security Measures*);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Neutral Vendor and its Employees are complying with its obligations under this Clause 29 (*Security Measures*) including the measures taken or proposed by the Neutral Vendor so as to comply with its obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the Neutral Vendor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 29 (*Security Measures*), immediately upon such failure becoming apparent; and
 - 29.5.2 ensure that, for the purpose of checking the Neutral Vendor's compliance with the obligation in Clause 29.3.2 (*Security Measures*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Neutral Vendor which are in any way connected with this Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of this Agreement. Such representative shall be entitled to all such information as it may reasonably require.
- 29.6 If at any time either before or after the completion or termination of this Agreement, the Neutral Vendor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Neutral Vendor shall forthwith inform the Authority of the matter with full particulars thereof.

Work Orders

- 29.7 If the Neutral Vendor proposes to enter into a Work Order which will involve the disclosure of Secret Matter to the Technology Provider, the Neutral Vendor shall:
- 29.7.1 submit for approval of the Authority the name of the Technology Provider, a statement of the work to be carried out and any other details known to the Neutral Vendor which the Authority shall reasonably require;
 - 29.7.2 incorporate into the Work Order the terms of the Appendix to DEFCON 659A (Security Measures) (Edition 09/21) and such secrecy and security obligations as the Authority shall direct. In this Appendix "Agreement" shall mean the "Work Order", "First Party" shall mean "the Neutral Vendor" and "Second Party" shall mean the "Technology Provider"; and
 - 29.7.3 inform the Authority immediately if it becomes aware of any breach by the Technology Provider of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Work Order.

Termination

- 29.8 The Authority shall be entitled to terminate this Agreement immediately if:
- 29.8.1 the Neutral Vendor is in breach of any obligation under this Clause 29 (*Security Measures*); or
 - 29.8.2 the Neutral Vendor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Neutral Vendor's breach of this 29 (*Security Measures*).

Acknowledgement by the Neutral Vendor

- 29.9 By entering into this Agreement, the Neutral Vendor confirms that:
- 29.9.1 it has received the Security Aspects Letter;
 - 29.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Agreement;
 - 29.9.3 the nature and details of the Secret Matter are understood; and
 - 29.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 29 (*Security Measures*).

Submission of security information

- 29.10 The Neutral Vendor shall submit all information required to be submitted under this Clause 29 (*Security Measures*) to:

deshels-nmh-commercial@mod.gov.uk

or such other address as may be notified in writing by the Authority to the Neutral Vendor from time to time.

30 Termination for Convenience¹⁴

- 30.1 The Authority shall have the right to terminate this Agreement in whole or in part at any time by giving the Neutral Vendor at least six (6) Months written notice (or such other period as may be stated in this Agreement). Upon expiry of the notice period this Agreement, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of this Agreement is being terminated, the Authority and the Neutral Vendor shall owe each other no further obligations in respect of the part of this Agreement being terminated but will continue to fulfil their respective obligations on all other parts of this Agreement not being terminated.
- 30.2 Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to this Agreement (or part being terminated) to direct the Neutral Vendor to:
- 30.2.1 not enter into any Call-Off Contract not yet entered into;
 - 30.2.2 complete in accordance with this Agreement the provision of any element of the Services;
 - 30.2.3 not used;
 - 30.2.4 terminate on the best possible terms any sub-contracts in support of the Services that have not been completed, taking into account any direction given under Clause 30.2.2 (*Termination for Convenience*).
- 30.3 Not used.
- 30.4 Not used.
- 30.5 Not used.
- 30.6 The Neutral Vendor shall include in any Work Order over £250,000 which it may enter into for the purpose of the Agreement, the right to terminate the Work Order under the terms of Clauses 1 to 5 of DEFCON 656B except that:
- 30.6.1 the name of the Neutral Vendor shall be substituted for the Authority except in Sub-Clause 3.a.;
 - 30.6.2 the notice period for termination shall be as specified in the sub-contract, or if no period is specified twenty (20) Working Days; and
 - 30.6.3 the Neutral Vendor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of DEFCON 656B".
- 30.7 Not used.

31 Termination for Default

Right to Terminate

¹⁴ DEFCON 656B (Edn 08/16)

- 31.1 If a Neutral Vendor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Agreement in accordance with the provisions of Clause 31.2 (*Right to Terminate*).
- 31.2 If a Neutral Vendor Default has occurred (including a default as contemplated in Clause 31.13 (*Termination Following a Change of Control of Contractor*)) and the Authority wishes to terminate the whole or any part of this Agreement pursuant to this Clause 31 (*Termination for Default*), it must serve a notice (the “**Termination Notice**”) on the Neutral Vendor stating:
- 31.2.1 that the Authority is terminating this Agreement or part thereof for Neutral Vendor Default;
 - 31.2.2 where relevant, the part of this Agreement that the Authority is terminating;
 - 31.2.3 the type and nature of the Neutral Vendor Default that has occurred, giving reasonable details; and
 - 31.2.4 that this Agreement or part thereof shall terminate on the day (the “**Neutral Vendor Default Termination Date**”) falling twenty (20) Working Days after the date the Neutral Vendor receives the Termination Notice.
- 31.3 For the avoidance of doubt, the issue of a Termination Notice pursuant to Clause 31.2 (*Right to Terminate*) shall not operate as a notice to terminate any Call-Off Contract or Work Order and the Neutral Vendor shall continue to fulfil its obligations in respect of Call-Off Contracts and Work Orders.
- 31.4 Not used
- 31.5 Not used.
- 31.6 Not used.
- 31.7 Not used.

Termination Date for Neutral Vendor Default

- 31.8 Following the issue of a Termination Notice pursuant to Clause 31.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Agreement, this Agreement shall terminate on the Neutral Vendor Default Termination Date.

Partial Termination

- 31.9 Where the Authority is terminating part of this Agreement, the Parties shall owe each other no further obligations in respect of such part of this Agreement as is specified in the Termination Notice from the Neutral Vendor Default Termination Date.
- 31.10 For the avoidance of doubt, where Clause 31.9 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Agreement that are not identified in the Termination Notice as being terminated.

Termination following a Prohibited Act

- 31.11 If the Neutral Vendor commits a Prohibited Act and/or breaches and/or is in default under Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Neutral Vendor warranties*), the Authority

may (subject to the provisions of Clause 31.12 (*Termination following a Prohibited Act*)) by notice:

- 31.11.1 require the Neutral Vendor to remove from performance of this Agreement any Neutral Vendor Related Party, and any of the Neutral Vendor's employees, consultants, or agents whose acts or omissions have caused the default; or
- 31.11.2 immediately terminate this Agreement; and
- 31.11.3 any notice served by the Authority under this Clause 31.11 (*Termination following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

31.12 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:

- 31.12.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
- 31.12.2 give all due consideration, where appropriate, to action other than termination of this Agreement, including without being limited to:
 - (i) requiring the Neutral Vendor to procure the termination of a Work Order where the Prohibited Act was undertaken by or on behalf of a Technology Provider or anyone acting on its or their behalf; or
 - (ii) requiring the Neutral Vendor to procure the re-assignment of an employee, consultant or agent (whether its own or that of anyone acting on its behalf) from performing this Agreement where the Prohibited Act is that of such employee, consultant or agent,

and the Neutral Vendor shall (and shall use all reasonable endeavours to procure that Technology Providers shall) give all due consideration to the Authority's proposal under this Clause 31.12 (*Termination following a Prohibited Act*).

Termination following a Change of Control of Neutral Vendor

- 31.13 If a change of control of the Neutral Vendor occurs in the circumstances described in Clause 36 (*Change of Control of Neutral Vendor*), a Neutral Vendor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Agreement within twelve (12) months of the date the Authority became aware that the relevant change of control of Neutral Vendor has occurred and such termination shall be subject to the provisions of Clause 31.2 (*Right to Terminate*).

Material Breach¹⁵

- 31.14 In addition to any other rights and remedies, the Authority shall have the right to terminate this Agreement (in whole or in part) with immediate effect by giving written notice to the Neutral Vendor where the Neutral Vendor is in material breach of its obligations under this Agreement.

¹⁵ DEFCON 514 (Edn 08/15)

31.15 Where the Authority has terminated this Agreement under Clause 31.14 (*Material Breach*) the Authority shall have the right to claim such damages as may have been sustained as a result of the Neutral Vendor's material breach of this Agreement, including but not limited to any costs and expenses incurred by the Authority in obtaining the Services in substitution from another supplier.

32 Bankruptcy and Insolvency¹⁶

32.1 The Authority may terminate this Agreement, without paying compensation to the Neutral Vendor, by giving written notice of such termination to the Neutral Vendor at any time after any of the following events:

32.1.1 where the Neutral Vendor is an individual or a firm:

- (i) the application by the individual or, in the case of a firm constituted under English Law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (ii) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (iii) the individual, the firm or, in the case of a firm constituted under English Law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (iv) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English Law, any partner of the firm unless it is withdrawn within three (3) Working Days from the date on which the Neutral Vendor is notified of the presentation; or
- (v) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English Law, any partner of the firm; or
- (vi) where the Neutral Vendor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Neutral Vendor as being unable to pay its debts if:
 - (A) it has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty one (21) days of service of the Statutory Demand on them; or
 - (B) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part;
- (vii) the presentation of a petition for sequestration in relation to the Neutral Vendor's estates unless it is withdrawn within three (3) Working Days from the date on which the Neutral Vendor is notified of the presentation; or

¹⁶ DEFCON 515 (Edn 06/21)

- (viii) the court making an award of sequestration in relation to the Neutral Vendor's estates.

32.1.2 where the Neutral Vendor is a company registered in England:

- (i) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Working Days from the date on which the Neutral Vendor is notified of the presentation; or
- (ii) the court making an administration order in relation to the company; or
- (iii) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Working Days from the date on which the Neutral Vendor is notified of the presentation; or
- (iv) the company passing a resolution that the company shall be wound-up; or
- (v) the court making an order that the company shall be wound-up; or
- (vi) the appointment of a Receiver or manager or administrative Receiver.

32.1.3 where the Neutral Vendor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in Clauses 32.1.2(i) to 32.1.2(vi) (*Bankruptcy and Insolvency*) inclusive above.

33 Corrupt Gifts and Payments of Commission¹⁷

33.1 The Neutral Vendor shall not do, and warrants that in entering this Agreement it has not done any of the following (hereafter referred to as "**Prohibited Acts**"):

33.1.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Agreement or any other contract with the Crown; or
- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown.

33.1.2 enter into this Agreement or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before this Agreement is made particulars of any such commission and of the terms and clauses of any such agreement for the payment thereof have been disclosed in writing to the Authority.

¹⁷ DEFCON 520 (Edn 08/21)

- 33.2 If the Neutral Vendor, its employees or agents (or anyone acting on its behalf or any of its employees) does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Neutral Vendor in relation to this Agreement or any other contract with the Crown, the Authority shall be entitled:
- 33.2.1 to terminate this Agreement and recover from the Neutral Vendor the amount of any Loss resulting from the termination;
 - 33.2.2 to recover from the Neutral Vendor the amount or value of any such gift, consideration or commission; and
 - 33.2.3 to recover from the Neutral Vendor any other Loss sustained in consequence of any breach of this Clause 33 (*Bribery and Payments of Commission*), where this Agreement has not been terminated.
- 33.3 In exercising its rights or remedies under this Clause 33 (*Bribery and Payments of Commission*), the Authority shall:
- 33.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act or committing of any offence under the Bribery Act 2010;
 - 33.3.2 give all due consideration, where appropriate, to action other than termination of this Agreement, including (without being limited to):
 - (i) requiring the Neutral Vendor to procure the termination of a Work Order where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of a Technology Provider or anyone acting on its behalf;
 - (ii) requiring the Neutral Vendor to procure the dismissal of an employee (whether its own or anyone acting on its behalf) where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of such employee.
- 33.4 Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Neutral Vendor pursuant to this Clause 33 (*Bribery and Payments of Commission*).

34 Consequences of Termination

- 34.1 Where this Agreement or any part thereof is terminated pursuant to Clause 31 (*Termination for Default*), the provisions of Clauses 34.2 to 34.3 (inclusive) (*Termination for Default*) shall apply.
- 34.2 Where Clause 34.1 (*Termination for Default*) applies, and the Authority makes alternative arrangements for the provision of the Services (which may, for the avoidance of doubt, include the Authority carrying out the Services itself and/or through any third party), the Authority shall be entitled to recover from the Neutral Vendor the cost of tendering for and/or making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such alternative arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Agreement had it not been terminated pursuant to 31 (*Termination for Default*).

34.3 Where the Authority is entitled to terminate this Agreement pursuant to Clause 31 (*Termination for Default*) as a result of the occurrence of a Prohibited Act (and/or the Neutral Vendor breaches and/or is in default under Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Neutral Vendor warranties*)), the Authority shall, in addition to its rights set out in Clause 34.2 (*Termination for Default*) (but without any double-counting) be entitled to:

34.3.1 recover from the Neutral Vendor the amount of any Losses resulting from such termination;

34.3.2 recover from the Neutral Vendor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and

34.3.3 where this Clause 34.3 (*Termination for Default*) applies but this Agreement has not been terminated, to recover from the Neutral Vendor any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Neutral Vendor pursuant to this Clause 34.3 (*Termination for Default*).

34.4 Where the Authority is entitled to terminate this Agreement pursuant to Clause 26.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 26.7 (*Tax Compliance*) and in addition to the Authority's rights in Clause 34.2 (*Termination for Default*) (but without double-counting), be entitled to recover from the Neutral Vendor:

34.4.1 the amount of any Losses resulting from such termination; and

34.4.2 where this Clause 34.4 (*Termination for Default*) applies but where this Agreement has not been terminated, any other Losses sustained as a result of the breach by the Neutral Vendor giving rise to the Authority's rights in this Clause 34.4 (*Termination for Default*).

34.5 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

34.5.1 agree all amounts which are due to each other arising under this Agreement, each Party shall pay to the other any amounts payable pursuant to this Clause 34 (*Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period; or

34.5.2 do not agree what amounts are due to each other arising under this Agreement, then the provisions of the Dispute Resolution Procedure shall apply.

34.6 Save as otherwise expressly provided in this Agreement:

34.6.1 termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Neutral Vendor;

34.6.2 termination of this Agreement shall not affect the continuing rights and obligations of the Neutral Vendor and the Authority under:

- (i) Clause 6.2 (*Obligations of the Neutral Vendor*);
- (ii) Clause 8 (*Neutral Vendor Warranties and Representations*);
- (iii) Clause 10 (*Call-Off Contracts*);
- (iv) Clause 12 (*Record keeping*);
- (v) Clause 14 (*Disclosure of Information*);
- (vi) Clause 15 (*Publicity and Communications with the Media*);
- (vii) Clause 17 (*Data Protection*);
- (viii) Clause 18 (*Cyber*);
- (ix) Clause 19 (*Limitation of Liability*);
- (x) Clause 22 (*TUPE*);
- (xi) Clause 23 (*Non-Solicitation*);
- (xii) Clause 26 (*Tax Compliance*);
- (xiii) Clause 28 (*Official-Sensitive Security Requirements*);
- (xiv) Clause 29 (*Security Measures*);
- (xv) Clause 34 (*Consequences of Termination*);
- (xvi) Clause 37 (*Dispute Resolution*); and
- (xvii) any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination; and

34.6.3 termination of this Agreement shall not affect the Neutral Vendor's obligation to fulfil any Call-Off Contracts which have not expired or terminated in accordance with the provisions of such Call-Off Contract.

35 Change

35.1 The Parties shall give effect to Schedule 8 (*Change*).

36 Change of Control of Neutral Vendor

36.1 The Neutral Vendor shall notify the Authority at the addresses given in Clauses **Error! Reference source not found.** and 36.2.2(*Change of Control of Neutral Vendor*), as soon as practicable, in writing of any intended, planned or actual change of control of the Neutral Vendor, including any Technology Providers. The Neutral Vendor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Neutral Vendor in the UK or other jurisdictions where the Neutral Vendor may be subject to legal sanction arising from issuing such a notice.

- 36.2 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

36.2.1 Stuart Allen, Commercial X

and emailed to: stuart.allen172@mod.gov.uk; and

36.2.2 Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b # 1301
MOD Abbey Wood
Bristol, BS34 8JH

and emailed to: DefComrcISSM-MergersandAcq@mod.gov.uk

- 36.3 The Authority shall consider the notice of change of control and advise the Neutral Vendor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Neutral Vendor prior to the Effective Date.
- 36.4 The Authority may terminate this Agreement by giving written notice to the Neutral Vendor within six months of the Authority being notified in accordance with Clause 36.1 (*Change of Control of Neutral Vendor*). The Authority shall act reasonably in exercising its right of termination under this Clause 36 (*Change of Control of Neutral Vendor*).
- 36.5 If the Authority exercises its right to terminate in accordance with Clause 36.4 (*Change of Control of Neutral Vendor*), the Neutral Vendor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Neutral Vendor in connection with this Agreement up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Neutral Vendor, and shall otherwise represent an unavoidable loss by the Neutral Vendor by reason of the termination of this Agreement. Any payment under this Clause 36.4 (*Change of Control of Neutral Vendor*) must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- 36.6 Notification by the Neutral Vendor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Neutral Vendor under this Agreement nor create or imply any rights of either the Neutral Vendor or the Authority additional to the Authority's rights set out in this Clause 36 (*Change of Control of Neutral Vendor*).

37 Dispute Resolution¹⁸

- 37.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution (“**ADR**”) procedure on which the Parties may agree.

¹⁸ DEFCON 530 (Edn 12/14)

- 37.2 In the event that the dispute or claim is not resolved by negotiation, or where the parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 37.3 The party initiating the arbitration shall give a written notice of arbitration to the other party. The notice of arbitration shall specifically state:
- 37.3.1 that the dispute is referred to arbitration; and
- 37.3.2 the particulars of this Agreement out of or in relation to which the dispute arises.
- 37.4 Unless otherwise agreed in writing by the parties, the arbitration and this Clause 37 (*Dispute Resolution*) shall be governed by the provisions of the Arbitration Act 1996.
- 37.5 It is agreed between the parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 37.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.
- 37.7 The Neutral Vendor shall continue to provide the Services in accordance with the terms of this Agreement until a dispute has been resolved.

38 Transfer¹⁹

- 38.1 Neither Party shall give, bargain, sell, assign, or otherwise dispose of this Agreement or any part thereof, or the benefit or advantage of this Agreement or any part thereof, without the prior consent in writing of the other Party.

39 Notices²⁰

- 39.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Agreement shall:
- 39.1.1 be given in writing;
- 39.1.2 be authenticated by signature or by such other method as agreed between the Parties;
- 39.1.3 be marked for the attention of the appropriate department or officer; and
- 39.1.4 be marked in a prominent position with the number of this Agreement.
- 39.2 Notices should be delivered by:

¹⁹ DEFCON 518 (Edn 02/17)

²⁰ DEFCON 526 (Edn 08/02)

- 39.2.1 hand;
 - 39.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas); or
 - 39.2.3 electronic mail, where such a means of communication has been agreed for the purposes of this Agreement.
- 39.3 Notices shall be deemed to have been received:
- 39.3.1 if delivered by hand, on the day of delivery if it is the recipient's Working Day and otherwise on the first Working Day of the recipient immediately following the day of delivery;
 - 39.3.2 if sent by first-class prepaid post (or airmail, if appropriate), on the third Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting;
 - 39.3.3 if sent by electronic means:
 - (i) if transmitted between 09.00 and 17:00 hours on a Working Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (ii) if transmitted at any other time, at 09.00 on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 39.4 The addresses (including electronic addresses) of each Party to which all Notices shall be sent are those specified in Schedule 11 (*Addresses and Other Information (DEFFORM 111)*), or such other address as either party may by written Notice specify to the other for the purpose of this Clause 39 (*Notices*).
- 39.5 Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

40 Waiver²¹ and Cumulative Remedies

- 40.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 40.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 40.3 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.

²¹ DEFCON 527 (Edn 09/97)

41 Severability²²

41.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:

41.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions of this Agreement; and

41.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

42 Rights of Third Parties²³

42.1 Except as provided in Clause 42.2 and Clause 42.3 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Agreement, no right is granted to any person who is not a Party to enforce any term of this Agreement in his own right and the Parties declare that they have no intention to grant any such right.

42.2 The undertakings and obligations in Clause 14 (Disclosure of Information) of this Agreement shall be enforceable by each of any of the Authorised Customers to the fullest extent permitted by law as if they were a party to this Agreement.

42.3 Where, and only where, this Agreement expressly states that a third party shall be entitled to enforce a term of this Agreement:

42.3.1 the said third party shall be entitled to enforce that term in their own right;

42.3.2 the Neutral Vendor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 42.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and

42.3.3 the third party's rights shall be subject to:

(i) the resolution of any dispute pursuant to the Dispute Resolution Procedure; and

(ii) Clause 45 (*Law*).

42.4 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

43 Neutral Vendor's Status

43.1 Nothing in this Agreement shall be construed as creating a partnership or joint venture or as a contract of employment between the Authority and the Neutral Vendor.

²² DEFCON 538 (Edn 06/02)

²³ DEFCON 537 (Edn 12/21)

- 43.2 Save as expressly provided otherwise in this Agreement, the Neutral Vendor shall not be, nor be deemed to be, an agent of the Authority and the Neutral Vendor shall not hold itself out as having authority or power to bind the Authority in any way.
- 43.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

44 Whole Agreement

- 44.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement.
- 44.2 This Agreement supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 44 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

45 Law²⁴

- 45.1 This Agreement shall be considered as an agreement made in England and subject to English Law.
- 45.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Agreement or breach thereof.
- 45.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 45 (*Law (English)*) and for the enforcement of any judgement, order or award given under English jurisdiction.

46 Counterparts

- 46.1 This Agreement may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

Signed by **ROB WHITMAN**)

DEPUTY HEAD COMMERCIAL)

DEFENCE DIGITAL)

for and on behalf of **THE SECRETARY OF**

STATE FOR DEFENCE

Rob Whitman 22/08/2024

²⁴ DEFCON 529 (Edn 09/97)

Executed by **CONSTELLIA PUBLIC**)
LIMITED acting by **ROB LEVENE**, a)
director)

).....

Director's signature

Schedule 1

Definitions and Acronyms

“Access Agreement” means an agreement between the Authority and a Contracting Authority under which the Contracting Authority may access this Agreement and place orders for Services from the Neutral Vendor in accordance with the terms of this Agreement;

“ADR” has the meaning given in Clause 37.1 (*Dispute Resolution Procedure*);

“Affiliate” means:

- (a) any holding company or subsidiary of the Neutral Vendor or any subsidiary of such holding company; or
- (b) any organisation in which the Neutral Vendor or any person who occupies the position of an officer or director of the Neutral Vendor has a direct or indirect financial interest; or means includes parent organisations or any organisations in which the Neutral Vendor, or senior representatives of the Neutral Vendor, has a direct or indirect financial incentive;

“Agreed Recovery Plan” means a Draft Recovery Plan which has been agreed by the Authority pursuant to Paragraph 3.5.1 of Schedule 4 (*Performance*);

“Annual Performance Report” means an Annual Performance Report in accordance with Schedule 15 (*Reporting and Meetings*);

“Annual Performance Review” means an Annual Performance Review in accordance with Schedule 15 (*Reporting and Meetings*);

“Authorised Customer” means any party described or set out in Schedule 18 (*Authorised Customers*);

“Authority Change Proposal” has the meaning given in Paragraph 2.3 of Schedule 8 (*Change*);

“Authority Respondents” means any respondent which the Authority notifies the Neutral Vendor is an “Authority Respondent” from time to time including, without limitation, any Sub-Contractor;

“Call-Off Contract” means a contract for the provision of Services awarded by a Contracting Authority to the Neutral Vendor under this Agreement substantially in the form set out in Schedule 10 (*Call-Off Contract*);

“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;

“Change” has the meaning given in Paragraph 2.1 of Schedule 8 (*Change*);

“Charges” means any of the charges for the provision of the Services and the performance of any of the Neutral Vendor’s other obligations under this Agreement, as determined in accordance with this Agreement;

“Child Labour Legislation” means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child’s health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Neutral Vendor in the jurisdiction(s) in which it performs this Agreement;

“Collaborative Behaviours” means the behaviours set out in the Collaborative Behaviours Questionnaire and which the Neutral Vendor is required to demonstrate;

“Collaborative Behaviours Questionnaire” means the Collaborative Behaviours Questionnaire substantially in the form set out in Schedule 4 (*Performance*);

“Conflict of Interest” means a conflict between the financial or personal interests of the Neutral Vendor or the Neutral Vendor’s Personnel and the duties owed to the Authority and/or Contracting Authorities under this Agreement;

“Contract Data Deliverable” means the deliverables set out in Appendix 1 to Schedule 15 (*Reporting and Meetings*);

“Contract Notice” means the contract notice published by the Authority on 6 November 2023 in Find A Tender (reference 2023/S 000-032749) and on the Defence Sourcing Portal (reference 709634450);

“Contract Year” means:

- (a) a period of twelve (12) months commencing on the Effective Date; or
- (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date, provided that the final Contract Year shall end on the Expiry Date or the Termination Date;

“Contracting Authority” means the Authority or any of the entities listed in Schedule 1 of the Public Contract Regulations 2015 which has entered into an Access Agreement with the Authority;

“Crown” means His Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- (a) UK GDPR;
- (b) DPA 2018; and

- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Defence Sourcing Portal” means the Defence Sourcing Portal accessible at <https://www.contracts.mod.uk/> or any replacement thereof;

“Delivered” means the Neutral Vendor has delivered a Report in accordance with the requirements (including delivery on time) of Schedule 15 (*Reporting and Meetings*) and the Authority has accepted such Report, and **“Deliver”** shall be construed accordingly;

“Dispute Resolution Procedure” means the procedure set out in Clause 37 (*Dispute Resolution (English Law)*);

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - (ii) 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 s.132A Social Security Administration Act 1992.

“DPA 2018” means the Data Protection Act 2018;

“DPQQ” means the pre-qualification questionnaire issued by the Authority in relation to the management of a supply chain of Technology Providers;

“DPQQ Response” means a response to a question in the DPQQ as set out in Schedule 13 (*DPQQ*);

“Draft Recovery Plan” has the meaning given in Paragraph 3.2 of Schedule 4 (*Performance*);

“EIR” means Environmental Information Regulations 2004;

“Effective Date” means the date of this Agreement;

“Employee” shall include any person who is an employee or director of the Neutral Vendor or who occupies the position of a director of the Neutral Vendor, by whatever title given;

“Expiry Date” means 21st August 2026 or as may be extended in accordance with Clause 3.4 (*Duration*);

“Final Payment Date” means the date falling ten (10) days from the date on which a Contracting Authority pays the Neutral Vendor for the Services including the Specialist Goods and Services which are the subject of an Invoice;

“Financial Management Information” means the value of work completed at a given point in time;

“FOIA” means the Freedom of Information Act 2000;

“Forward Plan” means the Neutral Vendor’s planned activity including information on expected Call-off Contracts, any proposed process improvements, staff changes, staff training, system changes, suggestions to improve the overall service and Contracting Authority experience, and any information reasonably requested by the Authority to be included in the Forward Plan;

“Framework Expenditure” means the value of goods and services from Call-Off Contracts and Work Orders that have been contracted for under this Agreement;

“Framework Expenditure Limit” means the maximum value of goods and services from Call-Off Contracts and Work Orders that can be contracted through this Agreement as notified by the Authority to the Neutral Vendor;

“General Anti-Abuse Rule” means:

- (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;

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

“GovS 007: Security” means the Government Functional Standard GovS: Security relating to the government’s expectations for protecting:

- (a) the government’s people, information and assets;
- (b) visitors to government property and third party suppliers while engaged on government business; and
- (c) citizen data;

“Government Department” means any department of the central government of the United Kingdom whose powers have not been devolved to any other national or regional executive or body, including any central government department with powers to administrate in specific geographical areas only (such as in England and Wales only);

“Guidance” means any applicable guidance or directions issued by a relevant authority with which the Neutral Vendor is bound to comply;

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others;

“HM Government” means His Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“Information” means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with this Agreement, including

information provided in the tender or negotiations which preceded the award of this Agreement;

“Insolvency Event”²⁵ occurs in relation to any person (which for the avoidance of doubt shall include an individual, a partnership, whether unlimited, limited, or limited liability, or any other type of entity as applicable and for this purpose “it” or “its” shall refer to such individual or partnership or other entity) when any one or more of the following events occurs to that person:

- (a) a meeting of its partners, shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition, to apply, or to file documents with a court or any registrar, for its winding-up, administration or dissolution, or for it to enter the moratorium procedure under Part A1 of the Insolvency Act 1986 (the **“Moratorium Procedure”**), or any such resolution is passed;
- (b) its partners, shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, compulsory manager, receiver, administrative receiver, administrator, monitor or similar officer, or a qualifying floating charge holder gives notice of their intention to appoint an administrator;
- (c) any person presents a petition, or makes an application, or files documents with a court or any registrar: for its winding-up, bankruptcy, sequestration, administration or dissolution; or for it to enter the Moratorium Procedure; or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, for the individual bankruptcy or sequestration of any one or more partners in the partnership, other than any winding-up, bankruptcy or sequestration petition which is contested in good faith and/or shown as frivolous or vexatious and discharged or dismissed within three (3) Working Days after presentation;
- (d) any Security Interest is enforced by a judicial decision over a part or all of its assets;
- (e) an order for its winding-up, bankruptcy, sequestration, provisional liquidation, administration, or dissolution is made, or an order that it is subject to the Moratorium Procedure is made, or it enters winding-up, bankruptcy, sequestration, provisional liquidation, administration, or the Moratorium Procedure, or is dissolved, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners is made bankrupt or an order for their sequestration is made;
- (f) any liquidator, provisional liquidator, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator, monitor under the Moratorium Procedure, or similar officer is appointed in respect of it or a part of its assets, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, a trustee in bankruptcy, compulsory manager, receiver or other similar officer is appointed in respect of any one or more of the partners or a part of their assets;
- (g) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for a moratorium under Schedule A1 to the Insolvency Act 1986 or an interim

²⁵ DEFCON 515 (Edn 06/21)

order pursuant to section 252 of the Insolvency Act 1986), or it enters or implements a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986, a scheme of arrangement under Part 26 of the Companies Act 2006, or a composition, arrangement or reconstruction under Part 26A of the Companies Act 2006, but excluding a scheme of arrangement under Part 26 of the Companies Act 2006 which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction;

- (h) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for an interim order pursuant to section 252 of the Insolvency Act 1986), or that partner or partners enters or implements a voluntary arrangement under Part VIII of the Insolvency Act 1986;
- (i) any one or more persons has become entitled to appoint a receiver, including without limitation an administrative receiver, over all or any of its assets, or has become entitled to appoint an administrator to it;
- (j) any creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within three (3) Working Days;
- (k) it 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership other than a limited liability partnership) has any partner to whom any of the foregoing apply;
- (l) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into an agreement for the rescheduling, reduction and/or a moratorium of any debts owed by it with all or any one or more of its creditors;
- (m) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into a composition, scheme or arrangement with or in respect of its creditors or any one or more of them, other than an arrangement as a solvent company for the purposes of amalgamation or reconstruction;
- (n) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or that partner or partners enter into a composition, scheme or arrangement with or in respect of their creditors or any one or more of their creditors;
- (o) it ceases, suspends or threatens to cease or suspend carrying on its business;

- (p) an “insolvency event” as defined in sections 121(2) to 121(5) inclusive of the Pensions Act 2004 occurs to it; and/or
- (q) any other step, process, procedure and/or event occurs in England and Wales or any other jurisdiction in relation to it that is equivalent, similar and/or analogous to any one or more of those set out in (a) to (p) inclusive above;

“Invoice” means an invoice submitted by a Technology Provider to the Neutral Vendor for Specialist Goods and Services delivered pursuant to a Work Order;

“Key Performance Indicators” or **“KPIs”** means the key performance indicators set out in Schedule 4 (*Performance*);

“KPI Data Report” means the KPI data report to be provided by the Neutral Vendor substantially in the form set out in Schedule 14 (*Publishable Performance Information - Key Performance Indicator Data Report*);

“KPI Report” has the meaning given in Paragraph 2.4 of Schedule 4 (*Performance*);

“Law” means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Losses” means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common Law (and **“Loss”** or **“loss”** shall have the same meaning as **“Losses”**);

“Management Levy” means the sum payable by the Neutral Vendor to the Authority being a percentage of the total Neutral Vendor Fees invoiced to applicable Contracting Authorities by the Neutral Vendor;

“Meeting Target” means that the relevant Delivery Objective has been achieved;

“Necessary Consents” means all permits, licences, permissions, clearances, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Neutral Vendor’s obligations under this Agreement or a Call-Off Contract, in order to comply with law, as a result of the rights of any Third Party and/or the requirements of any foreign government or organisation;

“Neutral Vendor Change Proposal” has the meaning given in Paragraph 2.4 of Schedule 8 (*Change*);

“Neutral Vendor Default” means:

- (a) a breach by the Neutral Vendor of any of its obligations under this Agreement which materially and adversely affects the provision of the Services;
- (b) not used;
- (c) a breach by the Neutral Vendor of any of the requirements of Schedule 12 (*Security*);
- (d) the occurrence of an Insolvency Event in relation to the Neutral Vendor;

- (e) the occurrence of a Prohibited Act and/or the Neutral Vendor breaches and/or is in default under Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Neutral Vendor warranties*),
- (f) a breach by the Neutral Vendor of Clause 38 (*Transfer*);
- (g) a breach by the Neutral Vendor of Clause 36 (*Change of Control of Neutral Vendor*);
- (h) the occurrence of any of the circumstances referred to in Clause 29.8 (*Termination*);
- (i) the occurrence of any of the circumstances referred to in Clause 26.5 (*Default*);
- (j) the Neutral Vendor commits a breach of this Agreement which results in the criminal investigation, prosecution and conviction of the Neutral Vendor under health and safety legislation;
- (k) the Neutral Vendor's total liability in respect of Losses and/or liability exceeds any of the limits specified in Clauses 19.3 or 19.4 (*Indemnity and Liability*);
- (l) a breach by the Neutral Vendor of the requirements of Clause 33 (*Corrupt Gifts and Payments of Commission*);
- (m) a breach by the Neutral Vendor of the requirements of Clause 24.3 (*Child Labour and Employment Law and Modern Slavery Act*); or
- (n) a breach by the Neutral Vendor or any of its Affiliates of the requirements of Clause 7.4 (*Obligations of the Neutral Vendor*);

"Neutral Vendor Default Termination Date" has the meaning given in Clause 31.2.4 (*Right to Terminate*);

"Neutral Vendor Fees" means the fees payable by Contracting Authorities to the Neutral Vendor for the Services;

"Neutral Vendor Related Party" includes parent organisations or any organisations in which the Neutral Vendor, or senior representatives of the Neutral Vendor, has a direct or indirect financial incentive.

"Neutral Vendor's Personnel" means all directors, officers, employees, agents, consultants and contractors of the Neutral Vendor and/or of any sub-contractor or Technology Provider engaged in the performance of the Neutral Vendor's obligations under this Agreement;

"Neutral Vendor's Proposals" means the Neutral Vendor's proposals set out in Schedule 3 (*Neutral Vendor's Proposals*);

"NV Retained Fees Contracted" means the amount due to the Neutral Vendor under all Call-Off Contracts after deducting the Work Order Contract Value and the Management Levy;

"NV Retained Fees Invoiced" means the amount due to the Neutral Vendor from the Total Framework Invoiced Value after deducting any amounts due to be paid under invoices for Work Orders and in respect of the Management Levy;

“NV Retained Fees Paid” means the amount paid to the Neutral Vendor from the Total Framework Paid Value after deducting any amounts due to be paid by the Neutral Vendor in respect of Work Orders and the Management Levy;

“Notices” has the meaning given in Clause 39.1 (*Notices*);

“Occasion Of Tax Non-Compliance” or **“OOTNC”** means:

- (a) any tax return of the Neutral Vendor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Neutral Vendor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Neutral Vendor 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; or
- (b) any tax return of the Neutral Vendor 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 date this Agreement came into effect or to a civil penalty for fraud or evasion;

“Optional Extension” has the meaning given in Clause 3.4 (*Duration*);

“Parent Company Guarantee” means a parent company guarantee provided by a parent company guarantor acceptable to the Authority and in a form acceptable to the Authority;

“Parties” means the Neutral Vendor and the Authority unless expressly stated differently;

“Performance Period” means the relevant Quarterly Performance Period or Contract Year;

“Performance Score” means the score for a KPI in relation to a Performance Period awarded in accordance with the provisions of Schedule 4 (*Performance*);

“Performance Score” means the score for a KPI in relation to a Quarterly Performance Period or Contract Year awarded in accordance with the provisions of Schedule 4 (*Performance*);

“Prohibited Act” has the meaning given in Clause 33.1 (*Corrupt Gifts and Payments of Commission*);

“Publishable Performance Information” means any of the information in the DEFFORM 539B KPI Data Report as it relates to a Key Performance Indicator where it is expressed as publishable in the table in DEFFORM 539B which shall not contain any information which is exempt from disclosure which shall be determined by the Authority; and which shall not constitute Sensitive Information;

“Quarterly Performance Period” means a period of three (3) consecutive calendar months, or, if fewer than three (3) calendar months remain until the Expiry Date or Termination Date, such number of calendar months remaining until the Expiry Date or Termination Date,

“Quarterly Performance Review” means a Quarterly Performance Review in accordance with Schedule 15 (*Reporting and Meetings*);

“Quarterly Performance Report” means the Quarterly Performance Report in accordance with Schedule 15 (*Reporting and Meetings*);

“Quarterly Spend Report” means the Quarterly Spend Report to be provided in accordance with Schedule 15 (*Reporting and Meetings*);

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Neutral Vendor is established;

“Report” means a report the Neutral Vendor is required to Deliver in accordance with Schedule 15 (*Reporting and Meetings*);

“Required Insurances” has the meaning given in Clause 20.1 (*Insurances*);

“RFP” means a request for proposal in respect of Specialist Technology Goods and Services required by a Contracting Authority and issued by the Neutral Vendor to potential Technology Providers;

“RFP Response” means a response by a potential Technology Provider to a RFP;

“Secret Matter” means any matter connected with this Agreement, or its performance which is designated by the Authority in the Security Aspects Letter or otherwise in writing as 'Top Secret' or 'Secret', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

“Security Aspects Letter” means the security aspects letter set out in Schedule 12 (*Security*);

“Security Interest” means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Sensitive Information” means the information listed in Schedule 9 (*Commercially Sensitive Information (DEFFORM 539A)*), being information notified by the Neutral Vendor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which this Agreement is entered into or amended (as relevant) and remains sensitive information at the time of publication;

“Services” means the services which the Neutral Vendor is required under this Agreement to perform or to fulfil as set out in Schedule 2 (*Obligations of the Neutral Vendor*);

“Social Value Plan” means the Social Value Plan set out at 0 (*Social Value Plan*);

“Specialist Technology Goods and Services” means any of the innovative technology goods and services set out in Appendix 1 to Schedule 2 (*Obligations of the Neutral Vendor*);

“Target Performance Level” has the meaning the meaning given in Paragraph 1.4 of Schedule 4 (*Performance*);

“Technology Provider” means a supplier who has been appointed by the Neutral Vendor to provide Specialist Technology Goods and Services pursuant to a Work Order;

“Term” means the period commencing on and from the Effective Date and ending on the earlier of the Expiry Date and the Termination Date;

“Termination Date” means the date of any early termination of the whole or part of this Agreement pursuant to Clauses or 30 (*Termination for Convenience*) or 31 (*Termination for Neutral Vendor Default*);

“Termination Notice” has the meaning given in Clause 31.2 (*Right to Terminate*);

“Total Framework Contract Value” means the total value of all Call-Off Contracts;

“Total Framework Invoiced Value” means the total value invoiced by the Neutral Vendor to Contracting Authorities pursuant to Call-Off Contracts;

“Total Framework Paid Value” means the total value paid to the Neutral Vendor by Contracting Authorities pursuant to Call-Off Contracts;

“Transfer Regulations” or **“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

“Transparency Information” means the content of this Agreement in its entirety, including from time to time agreed changes to this Agreement, except for (i) any information which is exempt from disclosure in accordance with the provisions of FOIA or EIR, which shall be determined by the Authority, and (ii) any Sensitive Information;

“UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

“Work Order” means a contract, agreement or work order for Specialist Technology Goods and Services between the Neutral Vendor and a Technology Provider;

“Work Order Contract Value” means the total value of Work Orders entered into between the Neutral Vendor and Technology Providers;

“Work Order Invoiced Value” means the total value invoiced by Technology Providers to the Neutral Vendor pursuant to Work Orders;

“Work Order Paid Value” means the total value paid to Technology Providers by the Neutral Vendor pursuant to Work Orders; and

“Working Day” means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and
- (b) privilege days notified in writing by the Authority to the Neutral Vendor at least ten (10) Working Days in advance.

Schedule 2

Obligations of the Neutral Vendor

Appendix 1 – Specialist Technology Goods and Services

OFFICIAL SENSITIVE

Schedule 3

Neutral Vendor's Proposals

Schedule 4

Performance

1 Introduction

- 1.1 This Schedule sets out the Key Performance Indicators (“**KPIs**”) that will be used to assess the Neutral Vendor’s performance under this Agreement.
- 1.2 The following KPIs are set out and detailed in Paragraphs 4 to 6:
- 1.2.1 KPI 1 – Reporting;
 - 1.2.2 KPI 2 – Payment of Sub-Contractors; and
 - 1.2.3 KPI 3 – Collaborative Behaviours; and
- 1.3 Nothing in this Schedule shall:
- 1.3.1 limit the Neutral Vendor’s obligations or liability; or
 - 1.3.2 restrict or limit the Authority’s rights,
- under this Agreement or otherwise.
- 1.4 Overachievement against a target performance level set out in the third column in the first table in each of Paragraphs 4 to 6 (“**Target Performance Level**”) for a KPI cannot be used to offset underperformance against such KPI or any other KPI.

2 Measurement and Reporting

- 2.1 The Neutral Vendor shall record its performance in respect of the KPIs using data from the source specified in the fourth column of the first table in each of Paragraphs 4 to 6.
- 2.2 The Neutral Vendor shall by the tenth Working Day following the end of each Quarterly Performance Period provide the Authority with a report (the “**Quarterly Performance Report**”) in a form and with evidence reasonably requested by the Authority, setting out the recorded Performance Score in respect of the relevant Quarterly Performance Period for:
- 2.2.1 KPI 1; and
 - 2.2.2 KPI 2.
- 2.3 The Neutral Vendor shall by the tenth Working Day following the end of each Contract Year provide the Authority with a report (the “**Annual Performance Report**”), in a form and with evidence reasonably requested by the Authority, setting out:
- 2.3.1 the recorded Performance Score in respect of the relevant Contract Year for:
 - (i) KPI 1
 - (ii) KPI 2: and

- (iii) KPI 3; and
- 2.3.2 the recorded Performance Score in respect of each Quarterly Performance Period within the relevant Contract Year for:
 - (iv) KPI 1; and
 - (v) KPI 2.
- 2.4 At each Quarterly Performance Review and Annual Performance Review, the Parties shall attempt in good faith to resolve any disputes relating to the reports referred to in Paragraphs 2.2 and 2.3 (the “**KPI Reports**”) and if such disputes are not resolved, the Dispute Resolution Procedure shall apply.
- 2.5 The Authority may undertake checks and verification audits of the KPI Reports and the Neutral Vendor shall provide all information, documents or records as may reasonably be requested by the Authority to support any such activity.
- 2.6 If, following a check or verification audit undertaken pursuant to Paragraph 2.5, the Authority (acting reasonably) determines that a KPI Report is not an accurate reflection of the Neutral Vendor’s performance against the relevant KPIs, the KPI Report shall be amended to reflect the Neutral Vendor’s actual performance in the relevant Performance Period.
- 2.7 Acceptance of a KPI Report may be withdrawn at any time during the Term if any discrepancy in a KPI Report is discovered.

3 Performance Management

- 3.1 If the Neutral Vendor fails to provide a KPI Report to the Authority’s reasonable satisfaction in accordance with the requirements of Paragraph 2.2 or 2.3 (as applicable) in a Performance Period, the Authority may deem the Performance Score for the relevant KPIs to be “Red” for the relevant Performance Period.
- 3.2 If the Neutral Vendor:
 - 3.2.1 does not meet the Target Performance Level of any KPI in a Performance Period; or
 - 3.2.2 fails to provide a KPI Report in accordance with the timelines specified in Paragraph 2.2 or 2.3 (as applicable),

the Neutral Vendor shall provide a draft recovery plan (“**Draft Recovery Plan**”) to the Authority within ten (10) Working Days of the relevant KPI Report.
- 3.3 Without prejudice to the remainder of this Schedule, if the Neutral Vendor fails to provide a KPI Report in accordance with the timelines specified in Paragraph 2.2 or 2.3 (as applicable), the Neutral Vendor shall provide to the Authority such KPI Report as soon as possible and in any event no later than the due date for submission of the immediately next due KPI Report.
- 3.4 The Draft Recovery Plan shall identify the cause of the relevant failure and set out proposed corrective action which shall ensure that the Neutral Vendor’s performance is restored, including to the Target Performance Level and the timescales in which the Neutral Vendor’s performance shall be restored to the Target Performance Level.

- 3.5 Within ten (10) Working Days of receiving the Draft Recovery Plan the Authority shall either:
- 3.5.1 agree the Draft Recovery Plan; or
 - 3.5.2 propose reasonable amendments to the Draft Recovery Plan.
- 3.6 The Neutral Vendor shall amend the Draft Recovery Plan in accordance with any Authority feedback and shall resubmit the Draft Recovery Plan to the Authority within five (5) Working Days. The process set out in Paragraph 3.5 shall apply to such an amended Draft Recovery Plan.
- 3.7 The Neutral Vendor shall implement the Agreed Recovery Plan.
- 3.8 The presence or implementation of an Agreed Recovery Plan shall not:
- 3.8.1 constitute a Change; and
 - 3.8.2 limit the rights or remedies of the Authority under this Agreement or otherwise.

4 Key Performance Indicator 1 – Reporting

- 4.1 KPI 1 shall apply from the Effective Date.

Requirement	Performance Score	Target Performance Level	Where Recorded
The Neutral Vendor shall Deliver all Reports	The Performance Score for KPI 1 is calculated in accordance with Paragraphs 4.2 to 4.3 and 4.6 below	Green	Quarterly Performance Report and Annual Performance Report

- 4.2 For each Quarterly Performance Period, the Neutral Vendor shall record:
- 4.2.1 the total number of Reports Delivered in the relevant Quarterly Performance Period; and
 - 4.2.2 the total number of Reports with a delivery date falling in the relevant Quarterly Performance Period.
- 4.3 For each Quarterly Performance Period the Performance Score for KPI 1 shall be calculated as $(A)/(B+C) \times 100$ where:
- 4.3.1 A is the total number recorded pursuant to Paragraph 4.2.1;
 - 4.3.2 B is the total number recorded pursuant to Paragraph 4.2.2; and
 - 4.3.3 C is the number of Reports with a delivery date in any previous Quarterly Performance Period which the Neutral Vendor has failed to Deliver by the first calendar day of the relevant Quarterly Performance Period.

- 4.4 For each Quarterly Performance Period the Performance Score for KPI 1 shall be “Green” where the Performance Score is 100.
- 4.5 For each Quarterly Performance Period the Performance Score for KPI 1 shall be “Red” where the Performance Score is less than 100.
- 4.6 For each Contract Year the Performance Score for KPI 1 shall be calculated as $D/(E+F) \times 100$ where:
- 4.6.1 D is the total number of Reports Delivered in the Quarterly Performance Periods of the relevant Contract Year;
 - 4.6.2 E is the total number of Reports with a delivery date falling in the Quarterly Performance Periods of the relevant Contract Year; and
 - 4.6.3 F is the number of Reports with a delivery date in any previous Contract Year which the Neutral Vendor has failed to Deliver by the first calendar day of the relevant Contract Year.
- 4.7 For each Contract Year the Performance Score for KPI 1 shall be “Green” where the Performance Score is greater than 90.
- 4.8 For each Contract Year the Performance Score for KPI 1 shall be “Red” where the Performance Score is 90 or less.

5 Key Performance Indicator 2 – Payment of Contractors

- 5.1 KPI 2 shall apply from the Effective Date.

Requirement	Performance Score	Target Performance Level	Where Recorded
The Neutral Vendor shall pay all Invoices by the Final Payment Date	The Performance Score for KPI 2 is calculated in accordance with Paragraphs 5.2 to 5.3 and 5.7 below	Green	Quarterly Performance Report and Annual Performance Report

- 5.2 For each Quarterly Performance Period, the Neutral Vendor shall record:
- 5.2.1 the total number of Invoices that were paid by the Final Payment Date in the relevant Quarterly Performance Period; and
 - 5.2.2 the total number of Invoices with a Final Payment Date falling in the relevant Quarterly Performance Period.
- 5.3 For each Quarterly Performance Period the Performance Score for KPI 2 shall be calculated as $A/(B+C) \times 100$ where:
- 5.3.1 A is the total number recorded pursuant to Paragraph 5.2.1;
 - 5.3.2 B is the total number recorded pursuant to Paragraph 5.2.2; and

- 5.3.3 C is the total number of Invoices with a Final Payment Date falling in any previous Quarterly Performance Period which the Neutral Vendor has failed to pay by the first calendar day of the relevant Quarterly Performance Period.
- 5.4 Nothing in Paragraph 5.2.2 limits the Neutral Vendor's obligation to pay those Invoices that have not been paid by the relevant Final Payment Date in previous Quarterly Performance Periods.
- 5.5 For each Quarterly Performance Period the Performance Score for KPI 2 shall be "Green" where the Performance Score is above 95.
- 5.6 For each Quarterly Performance Period the Performance Score for KPI 2 shall be "Red" where the Performance Score is 95 or less.
- 5.7 For each Contract Year the Performance Score for KPI 2 shall be calculated as $(D/(E+F)) \times 100$ where:
- 5.7.1 D is the total number of Invoices that were paid by the Final Payment Date in the Quarterly Performance Periods of the relevant Contract Year;
- 5.7.2 E is the total number of Invoices with a Final Payment Date in the Quarterly Performance Periods of the relevant Contract Year; and
- 5.7.3 F is the total number of Invoices with a Final Payment Date falling in any previous Contract Year which the Neutral Vendor has failed to pay by the first calendar day of the relevant Contract Year.
- 5.8 For each Contract Year the Performance Score for KPI 2 shall be "Green" where the Performance Score is greater than 95.
- 5.9 For each Contract Year the Performance Score for KPI 2 shall be "Red" where the Performance Score is 95 or less.

6 Key Performance Indicator 3 – Collaborative Behaviours

- 6.1.1 KPI 3 shall apply from the Effective Date.

Requirement	Performance Score	Target Performance Level	Where Recorded
The Neutral Vendor shall achieve a Performance Score of Green for Collaborative Behaviours	The Performance Score for KPI 3 is calculated in accordance with Paragraphs 6.6 to 6.9 below	Green	Online survey tool agreed by the Parties and reported in the Annual Performance Report

- 6.2 During the 10th month of each Contract Year the Neutral Vendor shall distribute via an online survey a Collaborative Behaviours Questionnaire to the Authority Respondents.
- 6.3 The Collaborative Behaviours Questionnaire shall have a number of statements and the Authority Respondents will be asked to "Strongly Agree", "Agree", "Disagree" or "Strongly Disagree" and set out reasons for their response and, where they see issues,

identify any potential corrective actions (from the Authority Respondent's perspective) that the Neutral Vendor could take to improve the relevant behaviour.

- 6.4 The Neutral Vendor shall collate the Collaborative Behaviours Questionnaire from the Authority Respondents which will form part of the KPI Report for the relevant Performance Period and be discussed at the relevant Annual Performance Review.
- 6.5 The Collaborative Behaviours Questionnaire shall be deemed to have been completed when the relevant Collaborative Behaviours Questionnaire is submitted, even if all of the questions are not completed.
- 6.6 For each Annual Performance Period the Neutral Vendor shall record:
 - 6.6.1 the total number of Collaborative Behaviours Questionnaires distributed to the Authority Respondents in the 10th month of the relevant year;
 - 6.6.2 the total number of completed Collaborative Behaviours Questionnaires submitted by the Authority Respondents within ten (10) Working Days of distribution of the Collaborative Behaviours Questionnaire; and
 - 6.6.3 the total number of responses from the Collaborative Behaviours Questionnaires recorded as:
 - (vi) "Strongly Agree";
 - (vii) "Agree";
 - (viii) "Disagree"; and
 - (ix) "Strongly Disagree".
- 6.7 The Performance Score for KPI 3 shall be "Green" where at least 75% of the responses from the completed Collaborative Behaviours Questionnaires are recorded as "Strongly Agree" and/or "Agree" and fewer than 25% of the responses are recorded as "Strongly Disagree".
- 6.8 The Performance Score for KPI 3 shall be "Amber" where:
 - 6.8.1 between 25% and 50% of the responses from the completed Collaborative Behaviours Questionnaires completed are recorded as "Disagree" or "Strongly Disagree" but fewer than 10% of the responses are recorded as "Strongly Disagree"; or
 - 6.8.2 fewer than 50% of the Authority Respondents complete the Collaborative Behaviours Questionnaire within ten (10) Working Days of issue by the Neutral Vendor.
- 6.9 The Performance Score for KPI 3 shall be "Red" where the criteria for "Green" or "Amber" are not met.

Appendix 1 – Collaborative Behaviours Questionnaire

Please place a cross in the box which most closely represents your feelings.

1 OPENESS AND HONESTY

1.1 The Neutral Vendor exhibits behaviours that foster a high level of trust between parties.

Strongly Agree	Agree	Disagree	Strongly Disagree

Where you have assessed the behaviour as 'Disagree' or 'Strongly Disagree', please set out reasons for your response and also, where you see issues in this area, identify any potential corrective actions.

--

2 FLEXIBILITY AND RESPONSIVENESS

2.1 The Neutral Vendor demonstrates a proactive approach to change and innovation when necessary, including adapting to accommodate evolving requirements where necessary.

Strongly Agree	Agree	Disagree	Strongly Disagree

Where you have assessed the behaviour as 'Disagree' or 'Strongly Disagree', please set out reasons for your response and also, where you see issues in this area, identify any potential corrective actions.

--

3 TIMELINESS

- 3.1 The Neutral Vendor acts quickly, within agreed timeframes to actions agreed upon. Accordingly, the Neutral Vendor has not created any delays to your project.

Strongly Agree	Agree	Disagree	Strongly Disagree

Where you have assessed the behaviour as 'Disagree' or 'Strongly Disagree', please set out reasons for your response and also, where you see issues in this area, identify any potential corrective actions.

--

4 COMMUNICATION AND TRANSPARENCY

- 4.1 The Neutral Vendor demonstrates professional communication and interaction.

Strongly Agree	Agree	Disagree	Strongly Disagree

Where you have assessed the behaviour as 'Disagree' or 'Strongly Disagree', please set out reasons for your response and also, where you see issues in this area, identify any potential corrective actions.

--

Schedule 5

Pricing

Schedule 6

Protection of Personal Data

- 1 The Neutral Vendor shall indemnify the Authority against any and all Losses incurred by the Authority in relation to the subject matter of this Agreement due to the breach by the Neutral Vendor of Data Protection Legislation or this Schedule.

Status of the Controller

- 2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- 2.1 “Controller” (where the other Party acts as the “Processor”);
- 2.2 “Processor” (where the other Party acts as the “Controller”);
- 2.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- 2.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Appendix 1 to this Schedule which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Appendix 1 to this Schedule by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
- 4 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 6.1 process that Personal Data only in accordance with Appendix 1 to this Schedule, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 6.2 ensure that it has in place Protective Measures, including in the case of the Neutral Vendor the measures set out in Appendix 1 to this Schedule which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - 6.2.1 nature of the data to be protected;
 - 6.2.2 harm that might result from a Data Loss Event;
 - 6.2.3 state of technological development; and
 - 6.2.4 cost of implementing any measures;
 - 6.3 ensure that:
 - 6.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 1 to this Schedule);
 - 6.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Schedule and Clause 14 (*Disclosure of Information*);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 6.4 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 6.4.1 the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or

6.4.2 the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:

- (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and/or
- (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- (iii) the Data Subject has enforceable rights and effective legal remedies;
- (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

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

7 Subject to Paragraph 8, the Processor shall notify the Controller immediately if it:

- 7.1 receives a Data Subject Request (or purported Data Subject Request);
- 7.2 receives a request to rectify, block or erase any Personal Data;
- 7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 7.6 becomes aware of a Data Loss Event.
- 8 The Processor's obligation to notify under Paragraph 7 shall include the provision of further information to the Controller in phases, as details become available.
- 9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 9.1 the Controller with full details and copies of the complaint, communication or request;
 - 9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 9.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 9.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 10.1 the Controller determines that the processing is not occasional;
 - 10.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 13.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 13.2 obtain the written consent of the Controller;
 - 13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
 - 13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Authority may on not less than thirty (30) Working Days' notice to the Neutral Vendor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

Where the Parties are Joint Controllers of Personal Data

- 16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Appendix 2 to this Schedule.

Where the Parties are Independent Controllers of Personal Data

- 17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 19 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- 21 The Parties shall only provide Personal Data to each other:
- 21.1 to the extent necessary to perform the respective obligations under this Agreement;
 - 21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);

- 21.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- 21.3.1 the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
 - 21.3.2 the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decisions 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
 - 21.3.3 the Data Subject has enforceable rights and effective legal remedies;
 - 21.3.4 the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - 21.3.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 21.4 where it has recorded it in Appendix 1 to this Schedule.

- 22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (**"the Request Recipient"**):
- 24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
- 24.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
- 24.2.2 provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 25 Each party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Agreement and shall:
- 25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- 25.2 implement any measures necessary to restore the security of any compromised Personal Data;
- 25.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

- 26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Appendix 1 to this Schedule.
- 27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Appendix 1 to this Schedule.
- 28 Notwithstanding the general application of Paragraphs 3 to 15 to Personal Data, where the Neutral Vendor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraph 16 to 27.

Standard Contractual Clauses

- 29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Agreement is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:

29.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or

29.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Agreement,

Paragraphs 30 to 31 below shall apply.

- 30 The Parties agree:

30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Neutral Vendor outside of the EU to the UK;

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

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

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

- 31 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

31.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such

update, amendment, substitution, adoption or publication and that such incorporation is not a change;

- 31.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 31.4 that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

OFFICIAL SENSITIVE

Appendix 1 – Processing Personal Data

NOT USED

THERE WILL BE NO PERSONAL DATA PROCESSED UNDER THIS CONTRACT

Appendix 2 – Joint Controller Agreement

1 Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Appendix in replacement of Paragraphs 2 - 15 (*Where one Party is Controller and the other Party is Processor*) and Paragraphs 17 - 31 (*Independent Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the Neutral Vendor:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Neutral Vendor's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2 Undertakings of Both Parties

- 2.1 The Neutral Vendor and the Authority each undertake that they shall:
- 2.1.1 report to the other Party every six months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

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

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.11(i) to 2.1.11(v); and
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.2 and 2.1.11(iii) to 2.1.11(v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Appendix.
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their duties under this Appendix and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;

- (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
 - 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Neutral Vendor holds;
 - 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
 - 2.1.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable) as agreed with the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office (as appropriate), as well as any additional measures;
- (A) where the transfer is subject to UK GDPR:
- 1) the UK International Data Transfer Agreement (the "IDTA") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - 2) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to

time (the “**EU SCCs**”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) or such updated version of such Addendum as is published by the Information Commissioner’s Office under section 119A(1) of the DPA 2018 from time to time; and/or

- (B) where the transfer is subject to EU GDPR, the EU SCCs (as well as any additional measures determined by the Controller being implemented by the importing party;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 2.2 Each Joint Controller shall use its best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Appendix in such a way as to cause the other Joint Controller to breach any of its’ obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3 Data Protection Breach

- 3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the other Party and its advisors with:
- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;
 - 3.1.2 all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Data Loss Event;

- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Paragraph 3.2.

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

- 3.2.1 the nature of the Data Loss Event;
- 3.2.2 the nature of Personal Data affected;
- 3.2.3 the categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the Neutral Vendor's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and
- 3.2.6 describe the likely consequences of the Data Loss Event.

4 Audit

4.1 The Neutral Vendor shall permit:

- 4.1.1 the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Neutral Vendor's data security and privacy procedures relating to Personal Data, its compliance with this Appendix 2 and the Data Protection Legislation; and
- 4.1.2 the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Neutral Vendor so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Neutral Vendor to assist in the provision of the Services.

4.2 The Authority may, in its sole discretion, require the Neutral Vendor to provide evidence of the Neutral Vendor's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5 Impact Assessments

5.1 The Parties shall:

- 5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- 5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Agreement, in accordance with the terms of Article 30 of the UK GDPR.

6 ICO Guidance

- 6.1 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner, and/or any relevant Central Government Body and/or any other regulatory authority. The Authority may on not less than thirty (30) Working Days' notice to the Neutral Vendor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner or any other regulatory authority.

7 Termination

- 7.1 If the Neutral Vendor is in material Default under any of its obligations under this Appendix 2 (Joint Controller Agreement), the Authority shall be entitled to terminate this Agreement by issuing a written notice to the Neutral Vendor in accordance with Clause 31.14 (*Material Breach*).

8 Sub-Processing

- 8.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
 - 8.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
 - 8.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

9 Data Retention

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

Schedule 7

TUPE

Employee Transfer Arrangements on Exit

1 Definitions

1.1 In this Schedule, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions and Acronyms*) shall have the meaning ascribed to them in Schedule 1 (*Definitions and Acronyms*).

1.2 Without prejudice to Schedule 1 (*Definitions and Acronyms*) unless the context otherwise requires:

"Data protection legislation" means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

- (i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the **"UK General Data Protection Regulation"** or **"UK GDPR"**);
- (ii) the Data Protection Act 2018;
- (iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Neutral Vendor or Technology Provider providing all or any part of the Services who employs or engages any person in providing the Services;

"New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Agreement;

"Relevant Transfer" means a transfer of the employment of Transferring Employees from the Neutral Vendor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

"Transfer Date" means the date on which the transfer of a Transferring Employee takes place under the Transfer Regulations;

"Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Neutral Vendor or any Employing Sub-Contractor to a New Provider; and

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2 Employment

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 No later than six (6) months preceding the termination, partial termination or Expiry of this Agreement or a potential Transfer Date or at any time after the service of a notice to terminate this Agreement or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Neutral Vendor shall (and shall procure that any Employing Sub-Contractor shall):

- (i) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Agreement;
- (ii) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Agreement who may be subject to a Relevant Transfer;
- (iii) provide the information promptly and in any event not later than three (3) months from the date when a request for such information is made and at no cost to the Authority;
- (iv) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Agreement;
- (v) inform the Authority of any changes to the information provided under Paragraph 2.1.1(i) or 2.1.1(ii) up to the Transfer Date as soon as reasonably practicable.

2.1.2 Three months preceding the termination, partial termination or expiry of this Agreement or on receipt of a written request from the Authority the Neutral Vendor shall:

- (i) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Schedule relating to the Transferring Employees is provided to the Authority and/or any New Provider;

- (ii) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Transfer Date as soon as reasonably practicable;
 - (iii) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than twenty eight (28) days prior to the Transfer Date the Neutral Vendor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Schedule relating to the Transferring Employees. The Neutral Vendor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.
- 2.1.4 Within fourteen (14) days following the relevant Transfer Date the Neutral Vendor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule in respect of Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule are subject to the Neutral Vendor's obligations in respect of the Data Protection Legislation and the Neutral Vendor shall use its best endeavours to obtain the consent of its employees (and shall procure that its sub-contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under Paragraphs 2.1.1 and 2.1.2. Notwithstanding this Paragraph 2.1.5, the Neutral Vendor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Neutral Vendor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Neutral Vendor shall provide full data to the Authority no later than twenty eight (28) days prior to the Transfer Date.
- 2.1.6 On notification to the Neutral Vendor by the Authority of a New Provider or within the period of six (6) months prior to the Termination Date or after service of a notice to terminate this Agreement (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Neutral Vendor shall not and shall procure that an Employing Sub-Contractor shall not:
 - (i) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Agreement; or
 - (ii) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the

Services under this Agreement or the working time spent on the Services (or any part thereof); or

- (iii) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Agreement; or
- (iv) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Agreement other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Neutral Vendor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule.

2.1.7 The Authority may at any time prior to the period set out in Paragraph 2.1.5 request from the Neutral Vendor any of the information in sections 1(a) to (d) of Appendix 1 and the Neutral Vendor shall and shall procure any Sub-Contractor will provide the information requested within twenty eight (28) days of receipt of that request.

2.2 Obligations in Respect of Transferring Employees

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this Agreement, the Neutral Vendor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (i) before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a New Provider; and
- (ii) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Neutral Vendor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under Paragraph 2.1.3 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Neutral Vendor shall notify the Authority on the Employing Sub-Contractor's behalf and the Authority shall notify the Neutral Vendor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Working Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (i) the Neutral Vendor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (ii) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Neutral Vendor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at Paragraph 46.1(iii)(C)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- (iii) the Neutral Vendor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
 - (A) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with Paragraph 46.1(ii);
 - (B) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;
 - (C) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - 1) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - 2) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - 3) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
 - (D) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Neutral Vendor (not to be unreasonably withheld or delayed);

(E) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of £5,000; and

(F) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under Paragraph 46.1(iii) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this Paragraph 2.3.

2.4 Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of this Agreement

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Relevant Transfer, the Neutral Vendor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Neutral Vendor or any Employing Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Neutral Vendor or any Employing Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Relevant Transfer, the Authority shall indemnify the Neutral Vendor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(i) any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Transfer Date;

(ii) subject to Paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Agreement (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Neutral Vendor or any Employing Sub-Contractor.

2.4.3 In the event of a Relevant Transfer, the Authority shall indemnify the Neutral Vendor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or a New Provider or any sub-contractor of a New Provider on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this Paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Contracts (Rights of Third Parties) Act 1999

2.5.1 A New Provider may enforce the terms of Paragraph 2.3 and 2.4 against the Neutral Vendor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Agreement.

2.5.3 Nothing in this Paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Agreement.

2.6 General

2.6.1 The Neutral Vendor shall not recover any costs and/or other Losses under this Schedule where such costs and/or Losses are recoverable by the Neutral Vendor elsewhere in this Agreement and/or are recoverable under the Transfer Regulations or otherwise.

Appendix 1 – Neutral Vendor Personnel-Related Information To Be Released Upon Re-Tendering Where The Transfer Regulations Apply

- 1 Pursuant to Paragraph 2.1.1(ii) of this Schedule 7 (*TUPE*), the following information will be provided:
 - (a) The total number of individual employees (including any employees of sub-contractors or Technology Providers) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Neutral Vendor should provide information why any of their employees or those of their sub-contractors or Technology Providers will not transfer;
 - (b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - (c) The preceding 12 months total pay costs – (Pay, benefits employee/employer national insurance contributions and overtime);
 - (d) Total redundancy liability including any enhanced contractual payments.
- 2 In respect of those employees included in the total at 1.1(a) the following information:
 - (a) Age (not date of Birth);
 - (b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - (c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - (d) Weekly conditioned hours of attendance (gross);
 - (e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - (f) Pension Scheme Membership;
 - (g) Pension and redundancy liability information;
 - (h) Annual Salary;
 - (i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - (j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - (k) Regular/recurring allowances;
 - (l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants).
- 3 The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty eight (28) days prior to the Transfer Date.

- 4 The Neutral Vendor will provide (and will procure that sub-contractors and/or Technology Providers provide) the Authority/tenderers with access to the Neutral Vendor's, sub-contractors' and/or Technology Providers' general employment terms and conditions applicable to those employees identified at Paragraph 1(a) of this Appendix 1.

Appendix 2 – Personnel Information to be released pursuant to this Agreement

PART A

- 1 Pursuant to Paragraph 2.1.2 of this Schedule 7 (*TUPE*), the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- (a) Age;
- (b) Security Vetting Clearance;
- (c) Job title;
- (d) Work location;
- (e) Conditioned hours of work;
- (f) Employment Status;
- (g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- (h) Details of training or sponsorship commitments;
- (i) Standard Annual leave entitlement and current leave year entitlement and record;
- (j) Annual leave reckonable service date;
- (k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- (l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- (m) Issue of Uniform/Protective Clothing;
- (n) Working Time Directive opt-out forms; and
- (o) Date from which the latest period of continuous employment began.

1.2 Superannuation and Pay

- (a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- (b) Annual salary and rates of pay band/grade;

OFFICIAL SENSITIVE

- (c) Shifts, unsociable hours or other premium rates of pay;
- (d) Overtime history for the preceding twelve-month period;
- (e) Allowances and bonuses for the preceding twelve-month period;
- (f) Details of outstanding loan, advances on salary or debts;
- (g) Pension Scheme Membership;
- (h) For pension purposes, the notional reckonable service date;
- (i) Pensionable pay history for three years to date of transfer;
- (j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (k) Percentage of pay currently contributed under any added years arrangements.

1.3 Medical

- (a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- (b) Details of any active restoring efficiency case for health purposes.

1.4 Disciplinary

- (a) Details of any active restoring efficiency case for reasons of performance; and
- (b) Details of any active disciplinary cases where corrective action is ongoing.

1.5 Further information

- (a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- (b) Short term variations to attendance hours to accommodate a domestic situation;
- (c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and;
- (d) Information about any current or expected maternity or other statutory leave or other absence from work.

PART B

1.6 Information to be provided twenty eight (28) days prior to the Transfer Date:

- 1.6.1 Employee's full name;
- 1.6.2 Date of Birth

- 1.6.3 Home address;
- 1.6.4 Bank/building society account details for payroll purposes Tax Code.

PART C

1.7 Information to be provided within fourteen (14) days following a Transfer Date:

- 1.7.1 Performance Appraisal
- 1.7.2 The current year's Performance Appraisal;
- 1.7.3 Current year's training plan (if it exists); and
- 1.7.4 Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;
- 1.7.5 Superannuation and Pay
- 1.7.6 Cumulative pay for tax and pension purposes;
- 1.7.7 Cumulative tax paid;
- 1.7.8 National Insurance Number;
- 1.7.9 National Insurance contribution rate;
- 1.7.10 Other payments or deductions being made for statutory reasons;
- 1.7.11 Any other voluntary deductions from pay.

Schedule 8

Change²⁶

1 Amendments to this Agreement

- 1.1 This Agreement may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
- 1.1.1 Authority Notice of Change under Paragraph 2; and
 - 1.1.2 the Neutral Vendor's unqualified acceptance of the amendments to this Agreement as evidenced by the DEFFORM 10B duly signed by the Neutral Vendor.
- 1.2 Where required by the Authority in connection with any such amendment, the Neutral Vendor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Neutral Vendor's liabilities and obligations under and in connection with this Agreement (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.

2 Change Control Procedure

Authority Changes²⁷

- 2.1 The Authority shall be entitled to propose any change to this Agreement (a "**Change**") or (subject to Paragraph 2.2) Changes in accordance with this Schedule 8 (*Change*).
- 2.2 Nothing in this this Schedule 8 (*Changes*) shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

Notice of Change

- 2.3 If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "**Authority Notice of Change**") on the Neutral Vendor.
- 2.4 The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Neutral Vendor to provide a written proposal (a "**Neutral Vendor Change Proposal**") in accordance with Paragraphs 2.7 to 2.9 (inclusive).
- 2.5 The Neutral Vendor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
- 2.5.1 would, if implemented, require the Neutral Vendor to deliver any Services under this Agreement in a manner that infringes any applicable Law relevant to such delivery; and/or

²⁶ DEFCON 503 (Edn 06/22)

²⁷ DEFON 620 (Edn 06/22)

- 2.5.2 would, if implemented, cause any existing consent obtained by or on behalf of the Neutral Vendor in connection with their obligations under this Agreement to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Neutral Vendor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
- 2.5.3 would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under this Agreement; and:
- 2.5.4 the Neutral Vendor notifies the Authority within ten (10) Working Days (or such longer period as shall have been agreed in writing by the Parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3 providing written evidence for the Neutral Vendor's reasoning on the matter; and
- 2.5.5 further to such notification:
- (i) either the Authority notifies the Neutral Vendor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Neutral Vendor that the Authority disputes the Neutral Vendor's notice under Paragraph 2.5.4 it is determined in accordance with Clause 37 (*Dispute Resolution*), that the relevant Change(s) is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3; and
 - (ii) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Neutral Vendor's grounds for refusing to implement the relevant Change under Paragraphs 2.5.1, 2.5.2 and/or 2.5.3. within ten (10) Working Days (or such longer period as shall have been agreed in writing by the parties) after:
 - (A) the date on which the Authority notifies in writing the Neutral Vendor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3); or
 - (B) the date of such determination.
- 2.6 The Neutral Vendor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

Neutral Vendor Change Proposal

- 2.7 As soon as practicable, and in any event within:
- 2.7.1 (where the Neutral Vendor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3 in accordance with Paragraph 2.5)

fifteen (15) Working Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Neutral Vendor shall have received the Authority Notice of Change; or

2.7.2 (where the Neutral Vendor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3 in accordance with Paragraph 2.5 and:

- (i) the Authority has agreed with the Neutral Vendor's conclusion so notified or it is determined under Clause 37 (*Dispute Resolution*), that the relevant Change(s) is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3 and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Neutral Vendor's grounds for refusing to implement the relevant Change(s) under Paragraphs 2.5.1, 2.5.2 and/or 2.5.3) fifteen (15) Working Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Neutral Vendor shall have received such revised Authority Notice of Change; or
- (ii) the Authority has disputed such conclusion and it has been determined in accordance with Clause 37 (*Dispute Resolution*) that the relevant Change(s) is/are not a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3) fifteen (15) Working Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination,

the Neutral Vendor shall deliver to the Authority a Neutral Vendor Change Proposal. For the avoidance of doubt, the Neutral Vendor shall not be obliged to deliver to the Authority a Neutral Vendor Change Proposal where the Neutral Vendor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Paragraph 2.5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Paragraphs 2.5.1, 2.5.2 and/or 2.5.3.

2.8 The Neutral Vendor Change Proposal shall comprise in respect of each and all Change(s) proposed:

- 2.8.1 the effect of the Change(s) on the Neutral Vendor's obligations under this Agreement;
- 2.8.2 a detailed breakdown of any costs which result from the Change(s);
- 2.8.3 the programme for implementing the Change(s);
- 2.8.4 any amendment required to this Agreement as a result of the Change(s), including, where appropriate, to the Contract Price; and
- 2.8.5 such other information as the Authority may reasonably require.

2.9 The price for any Change(s) shall be based on the prices (including rates) already agreed for this Agreement and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

Neutral Vendor Change Proposal – Process and Implementation

- 2.10 As soon as practicable after the Authority receives a Neutral Vendor Change Proposal, the Authority shall:
- 2.10.1 evaluate the Neutral Vendor Change Proposal; and
 - 2.10.2 where necessary, discuss with the Neutral Vendor any issues arising (and (in relation to a Change(s) proposed by the Authority) following such discussions the Authority may modify the Authority Notice of Change) and the Neutral Vendor shall as soon as practicable, and in any event not more than ten (10) Working Days (or such other period as the Parties shall have agreed in writing) after receipt of such modification, submit an amended Neutral Vendor Change Proposal.
- 2.11 As soon as practicable after the Authority has evaluated the Neutral Vendor Change Proposal (amended as necessary) the Authority shall:
- 2.11.1 either indicate its acceptance of the Neutral Vendor Change Proposal by issuing a DEFFORM 10B in accordance with Paragraph 1 whereupon the Neutral Vendor shall promptly sign and return to the Authority the DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Paragraph 1 and implement the relevant Change(s) in accordance with such proposal; or
 - 2.11.2 serve a notice on the Neutral Vendor rejecting the Neutral Vendor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).
- 2.12 If the Authority rejects the Neutral Vendor Change Proposal, it shall not be obliged to give its reasons for such rejection.
- 2.13 The Authority shall not be liable to the Neutral Vendor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Neutral Vendor Change Proposal has been accepted by the Authority in accordance with Paragraph 2.11.1 and then subject only to the terms of the Neutral Vendor Change Proposal so accepted.

Neutral Vendor Changes

- 2.14 If the Neutral Vendor wishes to propose a Change or Changes, they shall serve a Neutral Vendor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Paragraphs 2.8 to 2.13 (inclusive).

Schedule 9

Commercially Sensitive Information (DEFFORM 539A)

OFFICIAL SENSITIVE

Schedule 10

Call-Off Contracts

Schedule 11

Addresses and Other Information (DEFFORM 111)

Schedule 12

Security

Schedule 13

DPQQ

Schedule 14

Publishable Performance Information – Key Performance Indicator Data Report

Schedule 15

Reporting and Meetings

1 Contract Data Deliverables

- 1.1 The Contract Data Deliverables listed in Appendix 1 of this Schedule are in addition to any other Data Deliverables required under this Agreement.
- 1.2 The Neutral Vendor shall supply the Authority with reports on the progress of this Agreement.

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Appendix 1 – Reports

Item No.	Contract Data Deliverable	Description	Delivery Schedule
1	Quarterly Performance Report	A report in a form and with evidence reasonably requested by the Authority, setting out the recorded Performance Score in respect of the relevant Quarterly Performance Period for: (a) KPI 1; and (b) KPI 2.	By the tenth Working Day following the end of each Quarterly Performance Period
2	Annual Performance Report	A report in a form and with evidence reasonably requested by the Authority, setting out: (a) the recorded Performance Score in respect of the relevant Contract Year for: (i) KPI 1 (ii) KPI 2; and (iii) KPI 3. (b) the recorded Performance Score in respect of each Quarterly Performance Period within the relevant Contract Year for: (i) KPI 1; and (ii) KPI 2.	By the tenth Working Day following the end of each Contract Year

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3	Quarterly Spend Report	<p>A report in a form and with evidence reasonably requested by the Authority, setting out value for the following in the relevant Quarterly Performance Period:</p> <ul style="list-style-type: none"> (a) the total spend through framework with each Technology Provider during the relevant Quarterly Performance Period; and (b) Total Framework Contract Value; (c) Total Framework Invoiced Value; (d) Total Framework Paid Value; (e) Work Order Contract Value; (f) Work Order Invoiced Value; (g) Work Order Paid Value; (h) NV Retained Fees Contracted; (i) NV Retained Fees Invoiced; (j) NV Retained Fees Paid <p>It is acceptable to include the Quarterly Spend Report within the Quarterly Performance Report, provided that requirements a) to j) above for the Quarterly Spend Report are included in the Quarterly Performance Report.</p>	By the tenth Working Day following the end of each Quarterly Performance Period
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4	Annual Spend Report	<p>A report in a form and with evidence reasonably requested by the Authority, setting out value at the end of the relevant Contract Year:</p> <ul style="list-style-type: none"> (a) the total spend through framework with each Technology Provider during the relevant Quarterly Performance Period; and (b) Total Framework Contract Value; (c) Total Framework Invoiced Value; (d) Total Framework Paid Value; (e) Work Order Contract Value; (f) Work Order Invoiced Value; (g) Work Order Paid Value; (h) NV Retained Fees Contracted; (i) NV Retained Fees Invoiced; (j) NV Retained Fees Paid <p>It is acceptable to include the Annual Spend Report within the Annual Performance Report, provided that requirements a) to j) above for the Annual Spend Report are included in the Annual Performance Report.</p>	By the tenth Working Day following the end of each Contract Year
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Appendix 2 – Meetings

Meeting	Location	Frequency (subject to review)	Date	Purpose and Agenda Items	Key Attendees	Documents required in advance of meeting
Annual Performance Review	Microsoft Teams, unless specified by the Authority more than five (5) Working Days ahead of the meeting date	Annual	On a date as agreed between the Parties after the tenth but before the fifteenth Working Day following the end of each Contract Year, unless otherwise agreed between the Parties.	To review the Annual Performance Report and understand the Forward Plan.		Annual Performance Report Annual Spend Report
Quarterly Performance Review	Microsoft Teams, unless specified by the Authority more than five (5) Working Days ahead of the meeting date	Quarterly	On a date as agreed between the Parties after the tenth but before the fifteenth Working Day following the end of each Quarterly Performance Period, unless otherwise agreed between the Parties.	<p>To review the Quarterly Performance Report and understand the Forward Plan.</p> <p>The last Quarterly Performance Review of each Contract Year may be held consecutively with the Annual Performance Review. Each Quarterly Performance Review and Annual Performance Review must have a separate agenda.</p>		Quarterly Performance Report Quarterly Spend Report

Schedule 16

Social Value Plan

Schedule 17

Required Insurances

- 1 The Neutral Vendor shall hold the following insurance cover from the Effective Date in accordance with this Schedule:
 - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
 - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
 - 1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000); and
 - 1.4 product liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000).

Schedule 1

Authorised Customers

For the purposes of this Agreement, Authorised Customer shall mean:

1. Any of the following Customers, and any of their successors:

- (a) Ministerial government departments;
- (b) Non ministerial government departments;
- (c) Executive agencies of government and other subsidiary bodies
- (d) Non-Departmental Public Bodies (NDPBs), including advisory NDPBs, executive NDPBs, and tribunal NDPBs;
- (e) All non-Crown Status Government Companies wholly or partly owned by Central Government Departments and their subsidiaries. Assembly Sponsored Public Bodies (ASPBs);
- (f) Police forces;
- (g) Fire and rescue services;
- (h) Ambulance services;
- (i) Maritime and coastguard agency services;
- (j) NHS bodies;
- (k) Educational bodies or establishments including state schools (nursery schools, primary schools, middle or high schools, secondary schools, special schools), academies, colleges, Pupil Referral Unit (PRU), further education colleges and universities;
- (l) Hospices;
- (m) National Parks;
- (n) Housing associations, including registered social landlords;
- (o) Third sector and charities;
- (p) Citizens advice bodies;

(q) Councils, including county councils, district councils, county borough councils, community councils, London borough councils, unitary councils, metropolitan councils, parish councils;

(r) Other Public Bodies and Public corporations and their subsidiary bodies sponsored by Central Government Departments which are not covered by named categories in this Authorised Customer list;

(s) Public financial bodies or institutions;

(t) Public pension funds;

(u) Central banks; and

(v) Civil service bodies, including public sector buying organisations.

(w) All new bodies created which fall within the criteria of this Attachment 1) Authorised Customer list

2. Those listed and maintained by the Government on their website at <https://www.gov.uk/government/organisations> or any replacement web-link.

3. Those listed and maintained by the Office of National Statistics (ONS) at <https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide> or any replacement web-link.

4. Those set out in the definition of “Contracting Authority” in regulation 2(1) of the Public Contracts Regulations 2015 (PCR), namely:

(a) the State, regional or local authorities. This covers parliament, central government, regional government and local government;

(b) associations formed by one or more regional or local authorities;

(c) bodies governed by public law, as defined under regulation 2(1) of PCR, including any subsidiary and sponsoring department of such bodies. A body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity shall not be considered as being a ‘body governed by public law’ since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character;

(d) associations formed by one or more bodies governed by public law, including any (applicable) joint venture or corporation; and

(e) central government authorities, as defined under regulation 2(1) of PCR, and listed in Schedule 1 PCR