

# Award Form

Junior ISA Scheme for Children in Care and Care Leavers

[Subject to Contract]

Award Form

Crown Copyright 2022

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	<b>Buyer</b>	Department for Education (the Buyer).  Its offices are on: Department for Education Piccadilly Gate Store Street Manchester M1 2WD United Kingdom
2.	<b>Supplier</b>	Name: <b>The Share Foundation</b>  Address: <b>1st Floor Ardenham Court</b> <b>Oxford Road</b> <b>Aylesbury</b> <b>HP19 8HT</b>  <b>04500923</b> Registration number:  SID4GOV ID: <b>N/A</b>
3.	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables.  This opportunity is advertised in the Contract Notice in Find A Tender, reference Notice reference: 2022/S 000-028127 (FTS Contract Notice).

4.	<b>Contract reference</b>	<b>Project_7072</b>
5.	<b>Deliverables</b>	See Schedule 2 (Specification) for further details.
6.	<b>Buyer Cause</b>	Any breach of:  • <b>See Schedule 31</b>  And the Buyer shall have no obligation to perform any obligations placed on it in Schedule 2 (Specification) or Schedule 4 (Tender) unless they are specifically identified above.

7.	<b>Collaborative working principles</b>	The Collaborative Working Principles do not apply to this Contract. See Clause 3.1.3 for further details.
8.	<b>Financial Transparency Objectives</b>	The Financial Transparency Objectives do not apply to this Contract. <b>See Schedule 6</b> See Clause 6.3 for further details.
9.	<b>Start Date</b>	01 April 2023
10.	<b>Expiry Date</b>	31 March 2027
11.	<b>Extension Period</b>	<p><b>2 x 1 year options to extend:</b>  <b>01 April 2027 – 31 March 2028</b>  <b>01 April 2028 – 31 March 2029</b></p> <p>Extension exercised where the Buyer gives the Supplier no less than 3 Months' written notice before the Contract expires</p>
12.	<b>Ending the Contract without a reason</b>	<p>The Buyer shall be able to terminate the Contract in accordance with Clause 14.3.</p> <p>Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be 90 days</p>
13.	<b>Incorporated Terms</b> (together these documents form the " <b>the Contract</b> ")	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <p>This Award Form</p> <p>a) Any Special Terms (see <b>Section 14 (Special Terms)</b> in this Award Form)</p>

		<ul style="list-style-type: none"><li>b) Core Terms</li><li>c) Schedule 36 (Intellectual Property Rights)</li><li>d) Schedule 1 (Definitions)</li><li>e) Schedule 6 (Transparency Reports)</li><li>f) Schedule 20 (Processing Data)</li><li>g) The following Schedules (in equal order of precedence):<ul style="list-style-type: none"><li>a. Schedule 2 (Specification)</li><li>b. Schedule 3 (Charges)</li><li>c. Schedule 5 (Commercially Sensitive Information)</li><li>d. Schedule 8 (Implementation Plan &amp; Testing)</li><li>e. Schedule 10 (Service Levels)</li><li>f. Schedule 11 (Continuous Improvement)</li><li>g. Schedule 12 (Benchmarking)</li><li>h. Schedule 13 (Contract Management)</li><li>i. Schedule 14 (Business Continuity and Disaster Recovery)</li><li>j. Schedule 15 (Minimum Standards of Reliability)</li><li>k. Schedule 18 (Supply Chain Visibility)</li><li>l. Schedule 19 (Cyber Essentials Scheme)</li><li>m. Schedule 21 (Variation Form)</li><li>n. Schedule 22 (Insurance Requirements)</li><li>o. Schedule 24 (Financial Difficulties)</li><li>p. Schedule 25 (Rectification Plan)</li><li>q. Schedule 26 (Sustainability)</li><li>r. Schedule 28 (ICT Services)</li><li>s. Schedule 29 (Key Supplier Staff)</li><li>t. Schedule 30 (Exit Management)</li><li>u. Schedule 32 (Background Checks)</li><li>v. Schedule 37 (Corporate Resolution Planning Information)</li></ul></li><li>h) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in</li></ul>
--	--	---

which case that aspect of the Tender will take precedence over the documents above.

14.	<b>Special Terms</b>	Schedules 16 and 31 cover DfE specific terms.  For the avoidance of doubt, please see Schedule 20 Processing Data, Annex 1, Para 2, for data that is excluded.
15.	<b>Sustainability</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
16.	<b>Buyer's Environmental Policy</b>	<p><b>How we plan and manage sustainable operations</b></p> <p>We display our <a href="#">sustainable operations policy statement</a> (PDF, 342KB, 1 page) in our buildings' reception areas and online. To manage our environmental impact, we use an <a href="#">environmental management system</a> (PDF, 96.3KB, 2 pages) which is modelled on <a href="#">ISO14001:2004</a>.</p> <p>All our plans and targets are aligned to the Greening government commitment targets. We also focus on wider and longer-term targets, including from the:</p> <ul style="list-style-type: none"> <li>• <a href="#">Energy Efficiency Directive</a> articles 5 and 6: targets for 2020</li> <li>• <a href="#">Kyoto Protocol Agreement</a></li> <li>• <a href="#">Climate Change Act</a></li> </ul> <p>More detail on sustainability is available in the <a href="#">consolidated annual report and accounts</a>.</p> <p>Available online at <a href="#">Our energy use - Department for Education - GOV.UK (www.gov.uk)</a></p>
17.	<b>Social Value Commitment</b>	the Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and report on the Social Value KPIs as required by Schedule 10 (Service Levels)]
18.	<b>Buyer's Security Policy</b>	Schedule 16 (Security)
19.	<b>Commercially Sensitive Information</b>	Schedule 5 (Commercially Sensitive Information)]

20.	<b>Charges</b>	<p>Total contract costs: £1,893,519.20</p> <p>Details in Schedule 3 (Charges)</p>
21.	<b>Reimbursable expenses</b>	None
22.	<b>Payment method</b>	<b>See Schedule 31- Buyer Specific Terms, 3. - Invoicing</b>
23.	<b>Service Levels</b>	<p>Service Credits will accrue in accordance with Schedule 10 (Service Levels)</p> <p>The Service Credit Cap is: <b>£26,668.98 (5% of average annual contract value)</b></p> <p>The Service Period is : <i>[48 ] Month(s)</i></p> <p>A Critical Service Level Failure is: <b>See Schedule 10</b></p>
24.	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).
25.	<b>Liability</b>	<p>[In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than [the greater of £[<b>5 million</b>] or [<b>150</b>]% of the Estimated Yearly Charges]</p> <p>In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being <b>£15 Million</b></p>
26.	<b>Cyber Essentials Certification</b>	Cyber Essentials Scheme [Basic / Plus] Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)]
27.	<b>Progress Meetings and Progress Reports</b>	<ul style="list-style-type: none"> <li>• The Supplier shall attend Progress Meetings with the Buyer every 3 months</li> <li>• The Supplier shall provide the Buyer with Progress Reports every 3 months</li> </ul>
28.	<b>Guarantee</b>	Not applicable
29.	<b>Virtual Library</b>	<p>In accordance with Paragraph 2.2. of Schedule 30 (Exit Management)</p> <ul style="list-style-type: none"> <li>• the period in which the Supplier must create and maintain the Virtual Library, is as set out in that Paragraph; and</li> <li>• the Supplier shall update the Virtual Library every 12 months.</li> </ul>

30.	<b>Supplier Contract Manager</b>	<b>REDACTED</b> <i>Chairperson</i> <b>REDACTED</b>
		<b>REDACTED</b>
31.	<b>Supplier Authorised Representative</b>	<b>REDACTED</b> <i>Director of Operations</i> <b>REDACTED</b> <b>REDACTED</b>
32.	<b>Supplier Compliance Officer</b>	<b>REDACTED</b> <i>Director of Operations</i> <b>REDACTED</b> <b>REDACTED</b>
33.	<b>Supplier Data Protection Officer</b>	<b>REDACTED</b> <i>Director of Operations</i> <b>REDACTED</b> <b>REDACTED</b>
34.	<b>Supplier Marketing Contact</b>	<b>REDACTED</b> Chairperson <b>REDACTED</b> <b>REDACTED</b>
35.	<b>Key Subcontractors</b>	<b>Key Subcontractor</b> <i>N/A</i>
36.	<b>Buyer Authorised Representative</b>	<b>REDACTED</b> Deputy Director Adoption, Family Justice and Alternatives to Care <b>REDACTED</b> <b>REDACTED</b>



**Signed by person authorised to sign on behalf of the Secretary of State for Education:**

Signature:	{{Sig2_es_:signer2:signature}}
Name:	{{ N2_es_:signer2:fullname}}
Role:	{{ Ttl2_es_:signer2:title}}
Date:	{{ Dte2_es_:signer2:date}}

**Signed by a person authorised to sign on behalf of The Share Foundation:**

Signature:	{{Sig_es_:signer1:signature}}
Name:	{{ N_es_:signer1:fullname}}
Role:	{{ Ttl_es_:signer1:title}}
Date:	{{ Dte_es_:signer1:date}}

[Subject to Contract]  
Award Form  
Crown Copyright 2022

Core Terms – Mid-tier  
Crown Copyright 2022  
Version: v1.1  
[Subject to Contract]

# Core Terms – Mid-tier

## Contents

1. Definitions used in the contract.....	1
2. How the contract works.....	1
3. What needs to be delivered.....	3
4. Pricing and payments.....	6
5. The buyer’s obligations to the supplier.....	7
6. Record keeping and reporting.....	8
7. Supplier staff.....	10
8. Supply chain.....	11
9. Rights and protection.....	13
10. Intellectual Property Rights (IPRs).....	15
11. Rectifying issues.....	16
12. Escalating issues.....	17
13. Step-in rights.....	18
14. Ending the contract.....	19
15. How much you can be held responsible for.....	23
16. Obeying the law.....	25
17. Insurance.....	25
18. Data protection.....	25
19. What you must keep confidential.....	27
20. When you can share information.....	30
21. Invalid parts of the contract.....	31
22. No other terms apply.....	32
23. Other people’s rights in the Contract.....	32
24. Circumstances beyond your control.....	32
25. Relationships created by the contract.....	33
26. Giving up contract rights.....	33
27. Transferring responsibilities.....	33
28. Changing the contract.....	35
29. How to communicate about the contract.....	37

30. Dealing with claims .....	37
-------------------------------	----

Mid-tier Contract – Version 1.1

31. Preventing fraud, bribery and corruption .....	38
32. Equality, diversity and human rights .....	40
33. Health and safety .....	41
34. Environment .....	41
35. Tax .....	41
36. Conflict of interest .....	43
37. Reporting a breach of the contract .....	44
38. Further Assurances .....	44
39. Resolving disputes .....	45
40. Which law applies .....	46

Core Terms – Mid-tier  
Crown Copyright 2022  
Version: v1.1  
[Subject to Contract]

Mid-tier Contract – Version 1.1

## **1. Definitions used in the contract**

**Interpret this Contract using Schedule 1 (Definitions).**

## **2. How the contract works**

- 2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:**
- 2.1.1 make changes to the Award Form;**
  - 2.1.2 create new Schedules;**
  - 2.1.3 exclude optional template Schedules; and**
  - 2.1.4 use Special Terms in the Award Form to add or change terms.**
- 2.2 The Contract:**
- 2.2.1 is between the Supplier and the Buyer; and**
  - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.**
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.**
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of**

**Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:**

**2.4.1 the Buyer’s requirements for the Deliverables;**

**2.4.2 the Buyer’s operating processes and working methods; and**

**2.4.3 the ownership and fitness for purpose of the Buyer Assets,**

**and it has it has advised the Buyer in writing of:**

**2.4.4 each aspect, if any, of the Buyer’s requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;**

**2.4.5 the actions needed to remedy each such unsuitable aspect; and**

**2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,**

**and such actions, timetable and costs are fully reflected in this Contract.**

**2.5 The Supplier won’t be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:**

**2.5.1 verify the accuracy of the Due Diligence Information; and**

**2.5.2 properly perform its own adequate checks.**

**2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.**



- 2.7 **The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.**

### **3. What needs to be delivered**

#### **3.1 All deliverables**

##### **3.1.1 The Supplier must provide Deliverables:**

- a) **that comply with the Specification, the Tender Response and the Contract;**
- b) **using reasonable skill and care;**
- c) **using Good Industry Practice;**
- d) **using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;**
- e) **on the dates agreed; and**
- f) **that comply with Law.**

##### **3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.**

##### **3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:**

- a) **proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";**
- b) **being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;**

- c) **where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;**
- d) **providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and**
- e) **identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.**

### **3.2 Goods clauses**

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.**
- 3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.**
- 3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.**
- 3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.**
- 3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.**
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.**
- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.**
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.**
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.**

- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.**
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.**
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.**

### **3.3 Services clauses**

- 3.3.1 Late Delivery of the Services will be a Default of the Contract.**
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.**
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.**
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.**
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.**
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.**

- 3.3.7 **The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.**

## **4. Pricing and payments**

- 4.1 **In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.**
- 4.2 **All Charges:**
- 4.2.1 **exclude VAT, which is payable on provision of a valid VAT invoice; and**
- 4.2.2 **include all costs connected with the Supply of Deliverables.**
- 4.3 **The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.**
- 4.4 **A Supplier invoice is only valid if it:**
- 4.4.1 **includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and**
- 4.4.2 **includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).**
- 4.5 **The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.**

**4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.**

**4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.**

## **5. The buyer's obligations to the supplier**

**5.1 If Supplier Non-Performance arises from a Buyer Cause:**

**5.1.1 the Buyer cannot terminate the Contract under Clause 14.4.1;**

**5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;**

**5.1.3 the Supplier is entitled to additional time needed to make the Delivery;**

**5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.**

**5.2 Clause 5.1Error! Reference source not found. only applies if the Supplier:**

**5.2.1 gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;**

**5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and**

**5.2.3 mitigated the impact of the Buyer Cause.**

## **6. Record keeping and reporting**

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.**
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.**
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:**
  - 6.3.1 on or before the Start Date;**
  - 6.3.2 at the end of each Contract Year; and**
  - 6.3.3 within 6 Months of the end of the Contract Period,****and the Supplier must meet with the Buyer if requested within 10 Working Days of the Buyer receiving a Financial Report.**

**6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:**

**6.4.1 Supplier's currently incurred or forecast future Costs; and**

**6.4.2 forecast Charges for the remainder of the Contract,**

**then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.**

**6.5 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:**

**6.5.1 complies with the Supplier's operating procedures; and**

**6.5.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.**

**6.6 During an Audit, the Supplier must provide information to the Auditor and reasonable cooperation at their request including access to:**

**6.6.1 all information within the permitted scope of the Audit;**

**6.6.2 any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and**

**6.6.3 the Supplier Staff.**

**6.7 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.**

- 6.8 **The Supplier must comply with the Buyer’s reasonable instructions following an Audit, including:**
  - 6.8.1 correcting any identified Default;
  - 6.8.2 rectifying any error identified in a Financial Report; and
  - 6.8.3 repaying any Charges that the Buyer has overpaid.
- 6.9 **If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:**
  - 6.9.1 tell the Buyer and give reasons;
  - 6.9.2 propose corrective action; and
  - 6.9.3 provide a deadline for completing the corrective action.
- 6.10 **Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.**

## **7. Supplier staff**

- 7.1 **The Supplier Staff involved in the performance of the Contract must:**
  - 7.1.1 be appropriately trained and qualified;



**7.1.2 be vetted using Good Industry Practice and the Security Policy;  
and**

**7.1.3 comply with all conduct requirements when on the Buyer's  
Premises.**

**7.2 Where the Buyer decides one of the Supplier's Staff  
is not suitable to work on the Contract, the Supplier  
must replace them with a suitably qualified  
alternative.**

**7.3 If requested, the Supplier must replace any person  
whose acts or omissions have caused the Supplier to  
breach Clauses 31.1 to 31.4.**

**7.4 The Supplier must provide a list of Supplier Staff  
needing to access the Buyer's Premises and say why  
access is required.**

**7.5 The Supplier indemnifies the Buyer against all claims  
brought by any person employed by the Supplier  
caused by an act or omission of the Supplier or any  
Supplier Staff.**

## **8. Supply chain**

### **8.1 Appointing Subcontractors**

**8.1.1 The Supplier must exercise due skill and care when it selects  
and appoints Subcontractors to ensure that the Supplier is  
able to:**

- a) manage Subcontractors in accordance with Good Industry  
Practice;**
- b) comply with its obligations under this Contract; and**

- c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

## 8.2 **Mandatory provisions in Sub-Contracts**

**8.2.1 The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Effective Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:**

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

**8.2.2 The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Effective Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:**

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

## 8.3 **When Sub-Contracts can be ended**

**8.3.1 At the Buyer's request, the Supplier must terminate any SubContracts in any of the following events:**

- a) **there is a Change of Control of a Subcontractor which isn't preapproved by the Buyer in writing;**
- b) **the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;**
- c) **a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;**
- d) **the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or**
- e) **the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.**

#### **8.4 Competitive terms**

**8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.**

**8.4.2 If the Buyer uses Clause 8.4.1 Error! Reference source not found. then the Charges must be reduced by an agreed amount by using the Variation Procedure.**

#### **8.5 Ongoing responsibility of the Supplier**

**8.5.1 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.**

## **9. Rights and protection**

### **9.1 The Supplier warrants and represents that:**

**9.1.1 it has full capacity and authority to enter into and to perform the Contract;**

**9.1.2 the Contract is executed by its authorised representative;**

- 9.1.3 **it is a legally valid and existing organisation incorporated in the place it was formed;**
- 9.1.4 **there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;**
- 9.1.5 **all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and for the Buyer to receive the Deliverables;**
- 9.1.6 **it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;**
- 9.1.7 **it is not impacted by an Insolvency Event or a Financial Distress Event; and**
- 9.1.8 **neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Start Date or been subject to an investigation relating to a Prohibited Act.**
- 9.2 **The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under the Contract.**
- 9.3 **The Supplier indemnifies the Buyer against each of the following:**
  - 9.3.1 **wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and**
  - 9.3.2 **non-payment by the Supplier of any tax or National Insurance.**
- 9.4 **All claims indemnified under this Contract must use Clause 30.**

- 9.5 **The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.**
- 9.6 **If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.**
- 9.7 **All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer’s benefit by the Supplier.**

## **10. Intellectual Property Rights (IPRs)**

- 10.1 **The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.**
- 10.2 **If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.**
- 10.3 **If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer’s sole option, either:**
  - 10.3.1 **obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or**
  - 10.3.2 **replace or modify the relevant item with substitutes that don’t infringe IPR without adversely affecting the functionality or performance of the Deliverables.**

**10.4 If the Buyer requires that the Supplier procures a licence in accordance with Schedule 36 or to modify or replace an item pursuant to Schedule 36, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect.**

## **11. Rectifying issues**

**11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.**

**11.2 When the Buyer receives a requested Rectification Plan it can either:**

**11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or**

**11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.**

**11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:**

**11.3.1 will give reasonable grounds for its decision; and**

**11.3.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days.**

## **12. Escalating issues**

**12.1 If the Supplier fails to:**

**12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and**

**12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.**

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

**12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.**

**12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clause 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.**

## **13. Step-in rights**

**13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:**

**13.1.1 whether it will be taking action itself or with the assistance of a third party;**

**13.1.2 what Required Action the Buyer will take during the Step-In Process;**

**13.1.3 when the Required Action will begin and how long it will continue for;**

**13.1.4 whether the Buyer will require access to the Sites; and**

**13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.**

**13.2 For as long as the Required Action is taking place:**

**13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;**

**13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and**

**13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.**

**13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this notice**



**the Supplier will develop a draft Step-Out Plan for the Buyer to approve.**

**13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.**

**13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:**

**13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or**

**13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).**

## **14. Ending the contract**

**14.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.**

**14.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.**

**14.3 Ending the contract without a reason**

**The Buyer has the right to terminate the Contract at any time without reason or (unless the Award Form states something different) liability by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clauses 14.5.1b) to 14.5.1h) applies.**

#### **14.4 When the Buyer can end the Contract**

**14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:**

- a) **there's a Supplier Insolvency Event;**
- b) **the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance**
- c) **there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;**
- d) **the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request;**
- e) **there's any material Default of the Contract;**
- f) **a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;**
- g) **there's any material Default of any Joint Controller Agreement relating to the Contract;**
- h) **there's a Default of Clauses 2.7, 10, 12, 18, 19, 31, 36, Schedule 19 (Cyber Essentials) (where applicable) or Schedule 36 (Intellectual Property Rights) relating to the Contract;**
- i) **the performance of the Supplier causes a Critical Service Level Failure to occur;**
- j) **there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);**
- k) **there's a Change of Control of the Supplier which isn't preapproved by the Buyer in writing;**
- l) **the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;**

- m) **the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or**
- n) **the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.**

**14.4.2 The Buyer also has the right to terminate the Contract in accordance with Clauses 9.5 and 24.3, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) and Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable).**

**14.4.3 If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clauses 14.5.1b) to 14.5.1h) applies.**

## **14.5 What happens if the contract ends**

**14.5.1 Where the Buyer terminates the Contract under Clauses 14.4.1 and 9.5, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) or Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable). all of the following apply:**

- a) **The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.**
- b) **The Buyer's payment obligations under the terminated Contract stop immediately.**
- c) **Accumulated rights of the Parties are not affected.**
- d) **The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.**
- e) **The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.**
- f) **The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).**

- g) **The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.**
- h) **The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 10, 15, 18, 19, 20, 21, 22, 39, 40, Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.**

**14.5.2 If either Party terminates the Contract under Clause 24.3:**

- a) **each party must cover its own Losses; and**
- b) **Clauses 14.5.1b) to 14.5.1h) applies.**

**14.6 When the Supplier can end the contract**

**14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 30 days of the date of the Reminder Notice.**

**14.6.2 The Supplier also has the right to terminate the Contract in accordance with Clauses 24.3 and 27.5.**

**14.6.3 Where the Buyer terminates the Contract under Clause 14.3 or the Supplier terminates the Contract under Clause 14.6.1 or 27.5:**

- a) **the Buyer must promptly pay all outstanding Charges incurred to the Supplier;**
- b) **the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and**
- c) **Clauses 14.5.1d) to 14.5.1h) apply.**

**14.7 Partially ending and suspending the contract**

**14.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.**

**14.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of the Contract can still be used to effectively deliver the intended purpose.**

**14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:**

- a) reject the Variation; or
- b) increase the Charges, except where the right to partial termination is under Clause 14.3.

**14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.**

## **15. How much you can be held responsible for**

**15.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.**

**15.2 Neither Party is liable to the other for:**

**15.2.1 any indirect Losses; and**

**15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).**

**15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:**

- 15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;**
  - 15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and**
  - 15.3.3 any liability that cannot be excluded or limited by Law.**
- 15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 9.3, Error! Reference source not found., 16.3 or Schedule 7 (Staff Transfer) of the Contract.**
- 15.5 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.**
- 15.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.**
- 15.7 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:**
  - 15.7.1 Deductions; and**
  - 15.7.2 any items specified in Clause 15.4.**
- 15.8 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their**

**own liabilities and the liabilities of the other Suppliers.**

## **16. Obeying the law**

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).**
- 16.2 The Supplier shall comply with the provisions of:**
  - 16.2.1 the Official Secrets Acts 1911 to 1989; and**
  - 16.2.2 section 182 of the Finance Act 1989.**
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.**
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.**

## **17. Insurance**

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

## **18. Data protection**

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).**

- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.**
- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.**
- 18.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.**
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.**
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:**
- 18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and**
- 18.6.2 restore the Government Data itself or using a third party.**



**18.7 The Supplier must pay each Party’s reasonable costs of complying with Clause 18.6 unless the Buyer is entirely at fault.**

**18.8 The Supplier:**

- 18.8.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;**
- 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;**
- 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;**
- 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and**
- 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.**

## **19. What you must keep confidential**

**19.1 Each Party must:**

- 19.1.1 keep all Confidential Information it receives confidential and secure;**
- 19.1.2 not disclose, use or exploit the Disclosing Party’s Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and**

**19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.**

**19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:**

**19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;**

**19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;**

**19.2.3 if the information was given to it by a third party without obligation of confidentiality;**

**19.2.4 if the information was in the public domain at the time of the disclosure;**

**19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;**

**19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;**

**19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and**

**19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.**

**19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.**

**19.4 The Buyer may disclose Confidential Information in any of the following cases:**

**19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;**

**19.4.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;**

**19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;**

**19.4.4 where requested by Parliament; and**

**19.4.5 under Clauses 4.6 and 20.**

**19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.**

**19.6 Transparency Information and any Information which is exempt from disclosure by Clause 20 is not Confidential Information.**

**19.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.**

## **20. When you can share information**

**20.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.**

**20.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full cooperation and information needed so the Buyer can:**

**20.2.1 publish the Transparency Information;**

**20.2.2 comply with any Freedom of Information Act (FOIA) request;  
and**

**20.2.3 comply with any Environmental Information Regulations (EIR) request.**

**20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.**

## **21. Invalid parts of the contract**

- 21.1 If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.**
- 21.2 If any removal under Clause 21.1 is so fundamental that it prevents the purpose of the Contract from being achieved or it materially changes the balance of risk and rewards between the Parties, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to rectify these issues and to amend the Contract accordingly so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that it is reasonably possible, achieves the Parties' original commercial intention.**
- 21.3 If the Parties cannot agree on what amendments are required within 5 Working Days, the matter will be dealt with via commercial negotiation as set out in Clause Error! Reference source not found. and, if there is no resolution within 30 Working Days of the**

**matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.**

## **22. No other terms apply**

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

## **23. Other people’s rights in the Contract**

**No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.**

## **24. Circumstances beyond your control**

**24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:**

**24.1.1 provides a Force Majeure Notice to the other Party; and**

**24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.**

**24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a**

**failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.**

**24.3 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.**

## **25. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **26. Giving up contract rights**

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **27. Transferring responsibilities**

**27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.**

**27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it**

**reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:**

**27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;**

**27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or**

**27.2.3 the proposed Subcontractor employs unfit persons**

**27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.**

**27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.**

**27.5 The Supplier can terminate the Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.**



**27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.**

**27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:**

**27.7.1 their name;**

**27.7.2 the scope of their appointment; 27.7.3**

**the duration of their appointment; and**

**27.7.4 a copy of the Sub-Contract.**

## **28. Changing the contract**

**28.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.**

**28.2 The Supplier must provide an Impact Assessment either:**

**28.2.1 with the Variation Form, where the Supplier requests the Variation; and**

**28.2.2 within the time limits included in a Variation Form requested by the Buyer.**

**28.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:**

**28.3.1 agree that the Contract continues without the Variation; and**

28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).

28.4 **The Buyer is not required to accept a Variation request made by the Supplier.**

28.5 **The Supplier may only reject a Variation requested by the Buyer if the Supplier:**

28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or

28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.

28.6 **If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.**

28.7 **If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:**

28.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and

28.7.2 of how it has affected the Supplier's costs.

**28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.**

## **29. How to communicate about the contract**

**29.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.**

**29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.**

**29.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.**

## **30. Dealing with claims**

**30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.**

- 30.2 At the Indemnifier’s cost the Beneficiary must both:**
- 30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and**
  - 30.2.2 give the Indemnifier reasonable assistance with the claim if requested.**
- 30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.**
- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn’t damage the Beneficiary’s reputation.**
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.**
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.**
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:**
- 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and**

**30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.**

## **31. Preventing fraud, bribery and corruption**

### **31.1 The Supplier must not during the Contract Period:**

**31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);**

**31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.**

### **31.2 The Supplier must during the Contract Period:**

**31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;**

**31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and**

**31.2.3 if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.**

**31.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:**

- 31.3.1 **been investigated or prosecuted for an alleged Prohibited Act;**
  - 31.3.2 **been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;**
  - 31.3.3 **received a request or demand for any undue financial or other advantage of any kind related to the Contract; and**
  - 31.3.4 **suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.**
- 31.4 **If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.**
- 31.5 **If the Supplier is in Default under Clause 31.1 the Buyer may:**
- 31.5.1 **require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and**
  - 31.5.2 **immediately terminate this agreement.**
- 31.6 **In any notice the Supplier gives under Clause 31.4 it must specify the:**
- 31.6.1 **Prohibited Act;**
  - 31.6.2 **identity of the Party who it thinks has committed the Prohibited Act; and**

31.6.3 action it has decided to take.

## **32. Equality, diversity and human rights**

**32.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:**

**32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and**

**32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.**

**32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.**

## **33. Health and safety**

**33.1 The Supplier must perform its obligations meeting the requirements of:**

**33.1.1 all applicable Law regarding health and safety; and**

**33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.**

- 33.2 The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.**

## **34. Environment**

- 34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.**
- 34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.**

## **35. Tax**

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.**
- 35.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:**



**35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and**

**35.2.2 other information relating to the Occasion of Tax NonCompliance that the Buyer may reasonably need.**

**35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:**

**35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and**

**35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.**

**35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:**

**35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;**

- 35.4.2 the Worker’s contract may be terminated at the Buyer’s request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;**
- 35.4.3 the Worker’s contract may be terminated at the Buyer’s request if the Worker provides information which the Buyer considers isn’t good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and**
- 35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.**

## **36. Conflict of interest**

- 36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.**
- 36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.**
- 36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may**

**terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.**

## **37. Reporting a breach of the contract**

**37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:**

**37.1.1 Law;**

**37.1.2 Clause 16.1; and**

**37.1.3 Clauses 31 to 36.**

**37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 37.1 to the Buyer or a Prescribed Person.**

## **38. Further Assurances**

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

## **39. Resolving disputes**

**39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.**

**39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.3 to 39.5.**

**39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:**

**39.3.1 determine the Dispute;**

**39.3.2 grant interim remedies; and**

**39.3.3 grant any other provisional or protective relief.**

**39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.**

**39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.4.**

**39.6 The Supplier cannot suspend the performance of the Contract during any Dispute.**

## **40. Which law applies**

This Contract and any issues or Disputes arising out of, or connected to it, are governed by English law.

## **Schedule 1 (Definitions)**

### **1. DEFINITIONS**

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

1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common

interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

**1.3** In the Contract, unless the context otherwise requires:

- 1.3.1 the singular includes the plural and vice versa;
- 1.3.2 reference to a gender includes the other gender and the neuter;
- 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body; 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
- 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
- 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
- 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.3.13 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
  - (l) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

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

1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Additional FDE Group Member"</b>	means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);
<b>"Affected Party"</b>	the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Allowable Assumptions"</b>	means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Associates"</b>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

<p><b>"Audit"</b></p>	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> <li>(a) verify the integrity and content of any Financial Report;</li> <li>(b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>(d) verify the Open Book Data;</li> <li>(e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> </ul>
	<ul style="list-style-type: none"> <li>(f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>(g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>(h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>(i) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> <li>(j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;</li> <li>(k) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;</li> </ul>
<p><b>"Auditor"</b></p>	<ul style="list-style-type: none"> <li>(a) the Buyer's internal and external auditors;</li> <li>(b) the Buyer's statutory or regulatory auditors;</li> <li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> </ul>



	<p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>(f) successors or assigns of any of the above;</p>
<b>"Award Form"</b>	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;

<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	has the meaning given to it in the Award Form;
<b>"Buyer Data"</b>	<p>means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Buyer's or End User's Confidential Information, and which:</p> <p>(a) are supplied to the Supplier by or on behalf of the Buyer, or End User; or</p> <p>(b) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(c) any Personal Data for which the Buyer or End User is the Controller;</p>
<b>"Buyer Existing IPR"</b>	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)

<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer Third Party"</b>	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
<b>"Buyer's Confidential Information"</b>	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has</p>
	<p>come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and</p> <p>information derived from any of the above;</p>
<b>"Central Government Body"</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(a) Government Department;</p> <p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;

<p><b>"Commercially Sensitive Information"</b></p>	<p>the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
<p><b>"Comparable Supply"</b></p>	<p>the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;</p>
<p><b>"Compliance Officer"</b></p>	<p>the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;</p>
<p><b>"Confidential Information"</b></p>	<p>means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as <b>"confidential"</b>) or which ought reasonably to be considered to be confidential;</p>

<p><b>"Conflict of Interest"</b></p>	<p>a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;</p>
<p><b>"Contract"</b></p>	<p>the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;</p>
<p><b>"Contract Period"</b></p>	<p>the term of the Contract from the earlier of the:</p> <ul style="list-style-type: none"> <li>(a) Start Date; or</li> <li>(b) the Effective Date</li> <li>(c) until the End Date;</li> </ul>
<p><b>"Contract Value"</b></p>	<p>the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;</p>
<p><b>"Contract Year"</b></p>	<p>a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;</p>
<p><b>"Control"</b></p>	<p>control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;</p>

<b>"Controller"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Core Terms"</b>	the Buyer's terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms";
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <p>(a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <ul style="list-style-type: none"><li>(i) base salary paid to the Supplier Staff;</li><li>(ii) employer's National Insurance contributions;</li><li>(iii) pension contributions;</li><li>(iv) car allowances;</li><li>(v) any other contractual employment benefits;</li><li>(vi) staff training;</li><li>(vii) work place accommodation;</li><li>(viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li><li>(ix) reasonable recruitment costs, as agreed with the Buyer;</li></ul>

	<p>(b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>(c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>(d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>(e) Overhead;</p> <p>(f) financing or similar costs;</p> <p>(g) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>(h) taxation;</p> <p>(i) fines and penalties;</p> <p>(j) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>(k) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<p><b>"Critical Service Level Failure"</b></p>	<p>has the meaning given to it in the Award Form;</p>
<p><b>"Crown Body"</b></p>	<p>the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;</p>
<p><b>"Crown IPR"</b></p>	<p>means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);</p>
<p><b>"CRTPA"</b></p>	<p>the Contract Rights of Third Parties Act 1999;</p>

<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;

<p><b>"Delivery"</b></p>	<p>delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;</p>
<p><b>"Dependent Parent Undertaking"</b></p>	<p>means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other</p>
	<p>assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;</p>
<p><b>"Disaster"</b></p>	<p>the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the <b>"Disaster Period"</b>);</p>
<p><b>"Disclosing Party"</b></p>	<p>the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);</p>
<p><b>"Dispute"</b></p>	<p>any claim, dispute or difference (whether contractual or noncontractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;</p>
<p><b>"Dispute Resolution Procedure"</b></p>	<p>the dispute resolution procedure set out in Clause 39 (Resolving disputes);</p>

<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <p>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>(b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>(c) has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>"DOTAS"</b>	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;</p>

<b>"DPA 2018"</b>	The Data Protection Act 2018
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>"End Date"</b>	<p>the earlier of:</p> <p>(a) the Expiry Date as extended by the Buyer under Clause 14.2; or</p> <p>(b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>



<b>"End User"</b>	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under Clause 15.1:</p> <ul style="list-style-type: none"> <li>(a) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</li> <li>(c) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</li> </ul>
<b>"EU"</b>	European Union
<b>"EU GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);

<b>"Exit Plan"</b>	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
<b>"Expiry Date"</b>	the date of the end of the Contract as stated in the Award Form;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
<b>"FDE Group"</b>	the Supplier and any Additional FDE Group Member;
<b>"Financial Distress Event"</b>	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;</li> <li>(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> <li>(g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> <li>(h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report</li> </ul>

	<p>including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;</p> <p>(i) any of the following:</p> <ul style="list-style-type: none"><li>(i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;</li><li>(ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;</li><li>(iii) non-payment by any FDE Group entity of any financial indebtedness;</li><li>(iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;</li><li>(v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or</li><li>(vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or</li></ul> <p>(j) any one (1) of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold.</p>
--	---

<p><b>"Financial Report"</b></p>	<p>a report provided by the Supplier to the Buyer that:</p> <ul style="list-style-type: none"> <li>(a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</li> <li>(b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</li> <li>(c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have</li> </ul>
	<p>been issued by the Buyer to the Supplier on or before the Start Date for the purposes of this Contract; and</p> <ul style="list-style-type: none"> <li>(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;</li> </ul>
<p><b>"Financial Transparency Objectives"</b></p>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;</li> <li>(b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;</li> <li>(c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</li> <li>(d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;</li> <li>(e) the Parties challenging each other with ideas for efficiency and improvements; and</li> <li>(f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;</li> </ul>
<p><b>"FOIA"</b></p>	<p>the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;</p>

<p><b>"Force Majeure Event"</b></p>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;</li> <li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(c) acts of a Crown Body, local government or regulatory bodies;</li> <li>(d) fire, flood or any disaster; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</li> </ul>
	<ul style="list-style-type: none"> <li>(i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>(iii) any failure of delay caused by a lack of funds, and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</li> </ul>
<p><b>"Force Majeure Notice"</b></p>	<p>a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;</p>
<p><b>"General Anti-Abuse Rule"</b></p>	<ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013 and; and</li> <li>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</li> </ul>
<p><b>"General Change in Law"</b></p>	<p>a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;</p>
<p><b>"Goods"</b></p>	<p>goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;</p>

<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which:</p> <p>(a) are supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(b) the Supplier is required to generate, process, store or transmit pursuant to the Contract;</p>

<b>"Government Procurement Card"</b>	<p>the Government's preferred method of purchasing and payment for low value goods or services</p> <p><a href="https://www.gov.uk/government/publications/governmentprocurement-card--2">https://www.gov.uk/government/publications/governmentprocurement-card--2</a>;</p>
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

<p><b>"Impact Assessment"</b></p>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>(b) details of the cost of implementing the proposed Variation;</li> <li>(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
<p><b>"Implementation Plan"</b></p>	<p>the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;</p>
<p><b>"Incorporated Terms"</b></p>	<p>the contractual terms applicable to the Contract specified in the Award Form;</p>
<p><b>"Indemnifier"</b></p>	<p>a Party from whom an indemnity is sought under this Contract;</p>
<p><b>"Independent Controller"</b></p>	<p>a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;</p>

<p><b>"Indexation"</b></p>	<p>the adjustment of an amount or sum in accordance with the Award Form;</p>
<p><b>"Information"</b></p>	<p>has the meaning given under section 84 of the Freedom of Information Act 2000;</p>
<p><b>"Information Commissioner"</b></p>	<p>the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;</p>
<p><b>"Initial Period"</b></p>	<p>the initial term of the Contract specified in the Award Form;</p>

<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <ul style="list-style-type: none"><li>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none"><li>(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</li><li>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</li></ul></li><li>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</li><li>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</li><li>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;</li><li>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</li><li>(f) where that person is a company, an LLP or a partnership:</li></ul>
---------------------------	--



	<ul style="list-style-type: none"> <li>(i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</li> <li>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</li> <li>(iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</li> <li>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</li> </ul> <p>(a) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<p><b>"Installation Works"</b></p>	<p>all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract;</p>
<p><b>"Intellectual Property Rights" or "IPR"</b></p>	<ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<p><b>"Invoicing Address"</b></p>	<p>the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;</p>

<b>"IP Completion Day"</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
<b>"Joint Control"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;

<p><b>"Key Subcontractor"</b></p>	<p>any Subcontractor:</p> <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>(c) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract, and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</li> </ul>
<p><b>"Know-How"</b></p>	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Start Date;</p>
<p><b>"Law"</b></p>	<p>any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, 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 with which the Supplier is bound to comply;</p>
<p><b>"Law Enforcement Processing"</b></p>	<p>processing under Part 3 of the DPA 2018;</p>
<p><b>"Losses"</b></p>	<p>all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;</p>
<p><b>"Marketing Contact"</b></p>	<p>shall be the person identified in the Award Form;</p>
<p><b>"Milestone"</b></p>	<p>an event or task described in the Implementation Plan;</p>

<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly;</p>
<b>"New IPR Item"</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>"Notifiable Default"</b>	means: <p>(a) the Supplier commits a material Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>

<p><b>"Occasion of Tax Non –Compliance"</b></p>	<p>where:</p> <ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:           <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 Start Date or to a civil penalty for fraud or evasion;</li> </ul>
<p><b>"Open Book Data"</b></p>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>(b) operating expenditure relating to the provision of the Deliverables including an analysis showing:           <ul style="list-style-type: none"> <li>(i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>(ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>(iv) Reimbursable Expenses, if allowed under the Award Form;</li> </ul> </li> <li>(c) Overheads;</li> <li>(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</li> <li>(e) the Supplier Profit achieved over the Contract Period and on an annual basis;</li> </ul>

	<p>(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>(g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>(h) the actual Costs profile for each Service Period;</p>
<b>"Open Licence"</b>	<p>means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-governmentlicence/version/3/">http://www.nationalarchives.gov.uk/doc/open-governmentlicence/version/3/</a> and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standardsprinciples/open-standards-principles">https://www.gov.uk/government/publications/open-standardsprinciples/open-standards-principles</a>;</p>
<b>"Open Licence Publication Material"</b>	<p>means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;</p>
<b>"Overhead"</b>	<p>those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";</p>
<b>"Parent Undertaking"</b>	<p>has the meaning set out in section 1162 of the Companies Act 2006;</p>
<b>"Parliament"</b>	<p>takes its natural meaning as interpreted by Law;</p>
<b>"Party"</b>	<p>the Buyer or the Supplier and "<b>Parties</b>" shall mean both of them where the context permits;</p>
<b>"Personal Data"</b>	<p>has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;</p>
<b>"Personal Data Breach"</b>	<p>has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;</p>

<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistleblower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;

<p><b>"Prohibited Acts"</b></p>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or (c) committing any offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</li> </ul> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<p><b>"Protective Measures"</b></p>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>(a) the nature of the data to be protected</li> <li>(b) harm that might result from Data Loss Event;</li> <li>(c) state of technological development (d) the cost of implementing any measures</li> </ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data</p>
	<p>can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<p><b>"Public Sector Body"</b></p>	<p>means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;</p>



<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none"> <li>(a) full details of the Notifiable Default that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Notifiable Default; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);</li> </ul>
<b>"Rectification Plan Process"</b>	the process set out in Clause 11;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</li> <li>(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li> </ul>
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;

<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
<b>"Sites"</b>	<p>any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"> <li>(a) the Deliverables are (or are to be) provided; or</li> <li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> <li>(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)</li> </ul>
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)
<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)

<b>"Social Value Report"</b>	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used
<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into the Contract;
<b>"Special IPR Terms"</b>	any additional terms and conditions relating to IPR set out in the Award Form incorporated into the Contract;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>"Specification"</b>	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
<b>"Standards"</b>	any: <ul style="list-style-type: none"> <li>(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>(b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>(c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;</li> <li>(d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Step-In Process"</b>	the process set out in Clause 13;

<p><b>"Step-In Trigger Event"</b></p>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Service Level Failure;</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) where a right of termination is expressly reserved in this Contract;</li> <li>(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor required under the Award Form;</li> <li>(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;</li> <li>(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;</li> </ul>
	<ul style="list-style-type: none"> <li>(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;</li> <li>(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or</li> <li>(i) a need by the Buyer to take action to discharge a statutory duty;</li> </ul>
<p><b>"Step-Out Plan"</b></p>	<p>means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process;</p>
<p><b>"Storage Media"</b></p>	<p>the part of any device that is capable of storing and retrieving data;</p>
<p><b>"Sub-Contract"</b></p>	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<p><b>"Subcontractor"</b></p>	<p>any person other than the Supplier, who is a party to a SubContract and the servants or agents of that person;</p>

<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Subsidiary Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;

<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Supplier Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36.
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to: <ul style="list-style-type: none"> <li>(a) Achieve a Milestone by its Milestone Date;</li> <li>(b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</li> <li>(c) comply with an obligation under the Contract;</li> </ul>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;

<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;
<b>"Supplier's Confidential Information"</b>	<p>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, KnowHow, and/or personnel of the Supplier;</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract; Information derived from any of (a) and (b) above;</p>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;

<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);

<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
<b>"Test Plan"</b>	a plan: (a) for the Testing of the Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Third Party IPR Licence"</b>	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36
<b>"Transparency Information"</b>	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for – (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
	(b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);



<b>"UK GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019
<b>"Variation"</b>	means a variation to the Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 28 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

## **Schedule 2 (Specification)**

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

**The Specification will be inserted here at Contract Award Stage. The specification is available to bidders in Document 2- Service Specification**



Document%20%20  
Service%20Specificati

# 1. Procurement specification

<b>Title</b>	To manage the admin of the JISA scheme for children in care and existing CTF accounts

# 2. Introduction/Requirement background

## Overview

- 2.1. Junior ISAs (JISAs) and Child Trust Funds (CTFs) are long term tax-advantaged saving accounts for children up to the age of 18. Children are eligible for a JISA if they are under 18, resident in the UK, and not eligible for a CTF. Anyone can pay money into the accounts, but the funds cannot then be accessed by the account holder until their 18th birthday (or if they are terminally ill). At 18, the account will either mature into a standard (adult) ISA or the funds will be withdrawn. Children looked after for 12 months or more, and not eligible for a Child Trust Fund (CTF), are entitled to a £200 payment from the government into a Junior ISA.
- 2.2. The Junior ISA for looked after children scheme replaces the support previously provided through CTFs, which closed to new entrants in January 2011, although existing CTFs remain valid.
- 2.3. The current contract for managing the JISA and CTF schemes for children in care (CiC) and care leavers will expire on 31st March 2023. We wish to procure a supplier to manage the admin of JISAs and existing CTFs for four years (from 1 April 2023 to 31 March 2027), with the option to extend for a further two years (take-up of this option will depend on the appointed bidder satisfactorily delivering to the requirements of the contract during the initial period i.e. from 1 April 2023 to 31 March 2027). As this period will span two spending review (SR) periods, the contract will include break clauses at both the end of March 2025 and March 2026 as future funding will need to be approved. There will be a three month notice period in advance of these break clauses.
- 2.4. In addition to the contract, a separate Grant Funding Agreement will be put in place between the Department for Education and the successful delivery partner. This will enable payments of £200 to be made into each new JISA that is opened.

2.5. The supplier will ensure eligible children receive the payments due to them under the JISA scheme: by acquiring the necessary data from LAs, opening JISAs for those children, making payments into these JISAs, and providing information about the JISAs opened and payments made, to LAs, CiC and their carers. The supplier will invoice the DfE on a twoweekly basis for the numbers of JISAs opened and submit invoices quarterly to the DfE to cover payments for administration of the scheme. The delivery partner's role will also involve:

- Fund Management
- Management Reporting and Data Requests
- IT infrastructure
- Delivery of financial education
- Fundraising for additional donations

### **Context**

- 2.6. The government is the 'corporate parent' for children in care, which means it has a responsibility to provide the best possible care, safeguarding measures and opportunities for children who are looked after as a parent would for their child. The aim of the JISA scheme is to provide children in care with financial help from government in a similar way that their peers in the rest of society receive from their parents. The JISA is seen as a modest start in building a nest-egg for these young people, with the expectation that their LAs or foster carers will add to the account, so that when the young person turns 18, and is given responsibility for their account, they may have something more substantial than £200.
- 2.7. The current supplier administers over 33,000 JISA accounts, with a total value of £10.23m. Each JISA has an average value of £307, which has increased from the initial £200, either through interest or additional contributions. The total amount of grant payments from the DfE to open new JISAs on behalf of children in care and care leavers varies each year due to it being demand-led, but the amount provided has ranged between £2.5m and £3m per year.
- 2.8. Since October 2017, the contract has also covered the administration of existing CTFs of looked after children in addition to managing the JISA scheme. Until September 2017 CTFs for looked after children were managed by the Official Solicitors for England and Wales and for Northern Ireland, and the Accountant of Court in Scotland, all in conjunction with HMRC. However, HMT and DfE Ministers agreed that it would be beneficial for a single organisation to manage both schemes. The rationale being a removal of duplication and that the supplier could work to secure additional contributions to the accounts e.g. by LAs and foster parents and through the supplier's own fund-raising activities. Overall policy responsibility for CTFs continues to rest with HMRC.
- 2.9. The current supplier is managing over 16,300 CTFs. These have a total value of £17.544m. Each CTF has an average value of £1,174. As part of the award of the new contract, starting from 1 April 2023, the appointed supplier would need to continue managing the existing CTFs on behalf of HMRC (in addition to managing the JISA scheme and existing JISAs for DfE).

2.10. This work with CTFs also includes activity to raise their profile with young people. Currently account providers report that 58% of accounts belonging to young people who turned 18 since 1/9/2020 remain unclaimed. These include an estimated 85% of HMRC allocated

accounts, which are predominantly owned by the most disadvantaged young people. These include care experienced young people who have moved around and do not receive notifications of their accounts. It is vital that the new supplier can undertake work to match up as many “lost accounts” as possible with young people who may not know they exist.

## 3. Mandatory requirements

3.1. The successful bidder must demonstrate the following mandatory requirements:

- the skills to run an effective system to administer the scheme;
- a detailed plan for IT Infrastructure;
- a clear understanding of the purpose of the scheme and the need to increase awareness of CTF and JISAs;
- detail of how additional voluntary contributions will be secured and applied;
- an effective staffing and management structure;
- production of comprehensive and timely reports to DfE;
- description of how educational attainment will be supported through the contract with the purpose of tackling economic equality

## 4. Detailed requirements (THE SERVICES)



#### **4. Purpose**

To manage the Department's JISA scheme for looked after children and administration of CTFs on behalf of HMRC.

#### **5. Proposals**

The Department is willing to accept bids from a single contractor or from a consortium of organisations working in partnership. Bidders should indicate in their bid how the activities they undertake in the following requirement will aid them in delivering the scheme.

##### **5.1. Delivery of an effective system to administer the scheme**

We are open to creative proposals to establish an effective and efficient scheme. The scheme should put the least possible burden on local authorities. Local authorities are only required to notify new cases (children who have been in care for 12 months who have not been previously notified). Local authorities are already providing these details, so there is an established procedure. The supplier will need to engage with local authorities to ensure they are notified of children eligible both for Junior ISA initial payments, and additional funds generated by fundraising activities. We estimate that around 13,000 new JISA accounts will be opened each year.

##### **Child Trust Funds**

New eligibility for CTF ended in 2011. The successful bidder will assume management responsibility for existing CTFs, as an integral part of its management of the scheme described in this specification. The supplier will be expected to liaise with local authorities in connection with young people that already have or were eligible for a CTF as they enter or leave care.

This management responsibility for each CTF is expected to last until the earliest of the following:

- the child reaches 16 and chooses to assume management of their account;
- the child turns 18, when their account matures;
- the CTF is closed and the funds are transferred to a Junior ISA (which will also be managed by the successful bidder - or the account holder, if over 16) or
- a suitable person with parental responsibility for the child assumes management responsibility for the account.

Requirement 1

Bidders should detail:

- how the required information will be obtained from local authorities;
- how they will ensure that all eligible children are notified to them by local authorities and receive the funds due to them;
- the process and system that will be required to open accounts;
- how recipients, their carers and others will be kept informed of their accounts, payments and the scheme,
- how carers and others make payments themselves;
- how parents, carers and others would be encouraged to take over the management of accounts when a child leaves local authority care;
- the information that would be provided to local authorities and how it would be provided.

## 2. IT infrastructure

5. systems to support the scheme will be required to handle sensitive data, including personal details of vulnerable children. It is therefore essential that the systems meet the appropriate data security requirements.

The paramount information requirement on this service is full compliance with GDPR, its supporting regulations, and guidance from the Information Commissioner. A second requirement is compliance with HM Government's Security Policy Framework SPF, which provides the basis for assessment and management of risk to information. The SPF specifies a process called Accreditation to assess risk management of ICT-enabled services and systems.<sup>1</sup>

an  
Se

Th

It operates a proportionate 5-tier approach to Accreditation including compliance with all Mandatory (MUST)

requirements of the SPF at all tiers. It is likely that the Junior ISA ICT systems should be accredited at DfE tier 3. ease

DfE security policy attached to tender docs.

re

PI

## 3. A clear understanding of the purpose of the scheme

Requirement 2

5.

5.4	<p>Bidders should detail:</p> <ul style="list-style-type: none"><li>• how they will ensure the best Junior ISAs on the market (or CTFs where appropriate) are selected for looked after children;</li><li>• how they propose to evaluate whether savings held in a CTF should be retained in that account, or transferred to a Junior ISA on behalf of the account holder;</li><li>• what specific needs looked after children might have of Junior ISAs and CTFs, and whether these needs might be different depending on their age, cultural requirements, circumstances, etc;</li><li>• what skills and expertise in financial advice they would bring into the scheme to help select accounts;</li><li>• how the independence and impartiality of this advice would be maintained, particularly to avoid any potential conflicts of interest;</li><li>• how they would keep the market under review to ensure accounts under their management continued to provide best value;</li><li>• how they would propose to transfer the management of accounts at the end of the contract period should a new supplier be appointed to continue the service;</li><li>• how they would propose to raise awareness of JISA and CTF accounts among young people to ensure funds are received by the intended recipients.</li></ul>
-----	---

**Securing contributions from donors to establish a fund to provide additional support for eligible children, managing this fund and distributing it**

Bidders will need to show how they will secure contributions from donors. These may include, for example:

- Individual large donors
- Individual small donors
- Corporate donors
- Trusts and other funds

Proposals including fundraising partnerships and innovative approaches to fundraising would be particularly welcomed.

We would welcome creative proposals from bidders for the distribution of these funds, both so that eligible children can gain the best possible benefit and to maximise the potential for donations.

Bidders should note that the fundraising element of the scheme needs to be self-funding: communications and marketing costs to raise funds will not be met by the Department for Education.

### Requirement 3

Bidders should detail:

- fundraising activities and mechanisms they would employ to secure donations;
- evidence-based estimates of levels of funding that could be raised annually and monthly;
- evidence of their previous experience in fundraising, or how they ensure people with this experience are employed on the scheme;
- any proposed partnerships with other organisations to raise funds;
- how they would manage funds raised before they could be distributed to eligible children so that these children received the maximum benefit;
- proposals for an equitable method of distribution of funds raised;
- any arrangements for the governance or independent oversight of charitable activity;
- how they would propose to transfer arrangements for this aspects of the service at the end of the contract period should a new supplier be appointed to continue the service.

## 5.

### Bi 5 Overall delivery and project management

dr

sc Bidders should describe the staffing and management structure of the team required to deliver the scheme. When  
ris drawing up their proposal, bidders should think about any specific risks and issues they foresee in delivering the  
sc scheme. They should describe what contingencies and countermeasures they might put in place to mitigate these risks.  
They should also describe the structures and governance arrangements required to keep oversight of the scheme and  
proposed reporting mechanisms and measures.

Requirement 4

Bidders should detail:

- proposed staffing and management structure (if bidding as a consortium, including the responsibilities of different consortium members and how they will work together);
- project management arrangements;
- any specific risks or issues they foresee in delivering their proposal and detail the contingencies and countermeasures they would put in place to mitigate them; and how they will escalate these;
- how the Department for Education and, where relevant to them, the administrations of Wales, Scotland and Northern Ireland, will be provided with management and performance information;
- key performance indicators: what they would look like, examples of what they might include and how the programme's success will be measured;
- how links would be maintained with the Department for Education, including who would provide day-to-day contact;
- an approach to migrating the scheme at the end of the contract.

## 5.6 Social Value

There will be a social value requirement linked to this contract. The exact question to be answered will be in the question document.

For additional information see guidance [Here](#)

## 6. KPIs

Key Performance Indicator	Target
Percentage of data/reports supplied to LAs delivered according to timetable	>90%
Complaints received for accounts managed	<2%
Contractor to maintain unqualified operational and financial audits throughout the contract	100%
Additional funds raised for JISA/CTF accounts including: <ul style="list-style-type: none"> <li>• From LAs</li> <li>• Carers</li> <li>• Individual account holders</li> </ul>	>90%
400 new registrations onto the Stepladder scheme and 600 steps passed in 2023-24.	>90%

## Costs

## 7.

The Department expects to award a contract for a period commencing 1<sup>st</sup> April 2023 to 31 March 2027 to a value of around £300,000 per annum with the possibility of two one-year extensions.

## 8. System and delivery costs

Bidders will need to demonstrate that proposed costs are based on efficient models of delivery and provide good value for public money. You must ensure that all estimated costs are real, auditable and can be justified. Be sure you separately identify and include all expenditure that you expect to incur in relation to proposed activities, i.e. costs associated with:

- overheads i.e. premises/facilities/licences;
- staffing i.e. management, delivery and administration;

We would expect quarterly reporting against spending. Please note that the contract is intended to be inclusive of VAT costs and that further amounts will not be available should a vatable supply claim be made at any later stage.

No additional costs will be charged to the Department during the first four year term of the contract unless agreed with the contract manager prior to expenditure.

Payments of costs to the supplier will be made quarterly by BACS transfer following receipt of a valid invoice. (The transfer of funds in respect of payments to looked after children will need to be made at regular intervals, on receipt of requests by the supplier based on the actual number of eligible children notified to them by local authorities. This applies to the opening of Junior ISA accounts once the child has been looked after for 12 months.)

Bidders should detail:

- what VAT will be charged;
  - a complete breakdown of all costs by financial year;
  - clear costs for all overheads, including recruitment, accommodation, etc.;
  - accounting and finance provisions;
  - how you will ensure value for money for all expenditure; • cost models that link contract costs to contractors performance
- 2.2** • the cash value of any contribution in kind provided by partners.



### Costs incurred by local authorities

It is essential that costs to administer the scheme are not disproportionate to the amount paid out to beneficiaries. This includes costs both to the appointed supplier, and costs local authorities will incur in complying with the Junior ISA scheme. The Department for Education has committed to meeting these costs for local authorities. Bidders should note that if administrative costs are so high in all bids that they outweigh the benefits of the scheme for looked after children, we may not proceed with the competition.

Bidders should detail:

9.
  - the actions local authorities will be required to complete in order to comply with the scheme;
  - the local authority function or grade and numbers of staff required to complete those actions (e.g., clerical);
  - evidence-based estimate of the time required to complete those actions;
  - the total cost to local authorities of complying (assume local authority clerical rates of £27.10 per hour).

## **Value for Money**

- 9.1. with all government contracts, we expect to see value for money in bidders' estimate of their costs. Fully costed bids are expected.
- 9.2. Bidders must complete the attached Pricing Schedule in full to demonstrate how the costs have been arrived at.
10. Bidders are asked to set out separately the number of days, rates and costs for activity above the minimum requirements requested in this specification

## **Transfer of Undertaking (Protection of Employment) Regulations 2006**

10.1. The attention of bidders is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Whilst it is the responsibility of the bidder to consider whether TUPE applies in the circumstances of this contract, and to tender accordingly, it is the view of the Department that TUPE may apply as a consequence of any change in the provider of the services under this contract. Based on information provided by the incumbent provider of services, the Department understands that there are currently 11 employees who would potentially be within the scope of TUPE, although the Department makes no representations or warranties as to the accuracy of this information. Anonymised information on these employees is available via Jaggaer subject to the completion.

## **Schedule 3 (Charges)**

### **1. DEFINITIONS**

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

**"Anticipated Contract Life Profit Margin"** the anticipated Supplier Profit Margin over the Contract Period;

**"Maximum Permitted Profit Margin"** means the Anticipated Contract Life Profit Margin plus 5%;

### **2. HOW CHARGES ARE CALCULATED**

2.1 The Charges:

2.1.1 shall be calculated in accordance with the terms of this Schedule;

2.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and

2.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

### **3. THE PRICING MECHANISMS**

3.1 The pricing mechanisms and prices set out in Annex 1 shall be available for use in calculation of Charges in the Contract.

### **4. ARE COSTS AND EXPENSES INCLUDED IN THE CHARGES**

4.1 Except as expressly set out in Paragraph 5 below, or otherwise stated in the Award Form the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

4.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

4.1.2 costs incurred prior to the commencement of the Contract.

## **5. WHEN THE SUPPLIER CAN ASK TO CHANGE THE CHARGES**

- 5.1 The Charges will be fixed for the first **4** years following the Start Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 5.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.
- 5.3 Any notice requesting an increase shall include:
- 5.3.1 a list of the Charges to be reviewed;
  - 5.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
    - a) [a breakdown of the profit and cost components that comprise the relevant part of the Charges; ]
    - b) [details of the movement in the different identified cost components of the relevant Charge;]
    - c) [reasons for the movement in the different identified cost components of the relevant Charge;]
    - d) [evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and]
    - e) [evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Start Date.]
- 5.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 5.5 Any Approval granted by the Buyer pursuant to Paragraph 5.4 shall be on the condition that the change to the Charges will not result in the Supplier Profit Margin exceeding the Maximum Permitted Profit Margin.
- 5.6 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly.

## **6. OTHER EVENTS THAT ALLOW THE SUPPLIER TO CHANGE THE CHARGES**

- 6.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
- 6.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8;
  - 6.1.2 a benchmarking review in accordance with Schedule 12 (Benchmarking);

[Subject to Contract]

**Schedule 3 (Charges)**

Crown Copyright 2022

- 6.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges;
- 6.1.4 Not used
- 6.1.5 verification of the Allowable Assumptions in accordance with Paragraph **Error! Reference source not found.**

**7. NOT USED**

**8. NOT USED**

**9. NOT USED**

## **Annex 1: Rates and Prices**

**The preferred bidders price schedule will be added here at award stage.**

**Total contract costs: £1,893,519.20**

**Pricing Schedule REDACTED**

## **Annex 2: Allowable Assumptions**

*Not used*

Mid-tier contract – Version 1.1

## **Schedule 4 (Tender)**

### **TECHNICAL QUESTIONNAIRE**

**Invitation to Tender (ITT)**

**(Open Procedure)**

**MANAGEMENT OF JUNIOR ISA SCHEME AND CHILD TRUST FUND ACCOUNTS**

**REDACTED**



### Appendix 1: FREEDOM OF INFORMATION SCHEDULE

Refer to the 'Freedom of Information' section in the ITT Process Overview document.

<b>INFORMATION SUBMITTED AND CONSIDERED BY THE TENDERER AS CONFIDENTIAL/ COMMERCIALY SENSITIVE UNDER FOI ACT 2000</b>	
1. Document submitted	
2. Section/paragraph of document	
3. Specify the Information/wording considered to be confidential/ commercially sensitive	
4. Reasons/ justifications for Information being confidential/ commercially sensitive	
5. Timescale which information under (3) shall be confidential	
6. Specify Exemption Confidential or Commercially Sensitive	

[Subject to Contract]  
**Schedule 4 (Tender)**  
Crown Copyright 2022

Please complete the above if required and submit additional sheets if necessary.



[Subject to Contract]

**Schedule 5 (Commercially Sensitive Information)** Crown

Copyright 2022

## Schedule 5 (Commercially Sensitive Information)

### 2. WHAT IS THE COMMERCIALLY SENSITIVE INFORMATION?

2.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.

2.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).

2.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
	January 2023	Personal Details Price Supplier Solution (Schedule 4)	01 April 2023 – 31 March 2027 01 April 2027 – 31 March 2028 01 April 2028 – 31 March 2029

**Schedule 6 (Transparency Reports)**

Crown Copyright 2022

## Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

[Subject to Contract]  
**Schedule 6 (Transparency Reports)**  
Crown Copyright 2022

## **Annex A: List of Transparency Reports**

<b>Title</b>	<b>Content</b>	<b>Format</b>	<b>Frequency</b>
Contract	Redacted version of the signed contract	PDF Contract	30 days after contract signature



## **Schedule 7 (Staff Transfer)**

### **1. DEFINITIONS**

1.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

**“Admission Agreement”** as defined in Part D;

**"Employee Liability"** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee



which would have been payable by the Supplier or the

Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;

- (f) claims whether in tort, contract or statute or otherwise;

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

as defined in Part D;

**“Fair Deal Employees”**

**"Former Supplier"**

a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

**“New Fair Deal”**

the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes **Error! Reference source not found.-Error! Reference source not found.** inclusive to **Error! Reference source not found.** of this Schedule as notified to the Supplier by the Buyer;

<b>“Notified Subcontractor”</b>	a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Old Fair Deal”</b>	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”</i> issued in June 2004;
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);
<b>“Replacement Subcontractor”</b>	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;

<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>"Staffing Information"</b>	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, , all information required in 0 ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in 0 from time to time.
<b>“Statutory Schemes”</b>	means the CSPS, NHSPS or LGPS as defined in the Annexes to <b>Error! Reference source not found.</b> of this Schedule;
<b>"Supplier's Final Supplier Staff List"</b>	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Staff List"</b>	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>"Transferring Buyer Employees"</b>	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.
<b>“Transferring Supplier Employees”</b>	those employees of the Supplier and/or the Supplier’s Subcontractors to whom the

Employment Regulations will apply on the Relevant Transfer Date.

## **2. INTERPRETATION**

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## **3. WHICH PARTS OF THIS SCHEDULE APPLY**

Only the following parts of this Schedule shall apply to this Contract:

- 3.1 [Part A (Staff Transfer At Start Date – Transferring Employees from the Buyer to the Supplier)] **NOT USED**
- 3.2 [Part B (Staff Transfer At Start Date – Transfer From Former Supplier)]
- 3.3 [Part C (No Staff Transfer On Start Date)] **NOT USED**
- 3.4 [Part D (Pensions)]
  - 3.4.1 [ - Annex D1 (CSPS) ]
  - 3.4.2 [ - Annex D2 (NHSPS) ]
  - 3.4.3 [ - Annex D3 (LGPS) ]
  - 3.4.4 [ - Annex D4 (Other Schemes) ]
- 3.5 Part E (Staff Transfer on Exit)
  - 3.5.1 Annex E1 (List of Notified Subcontractors)
  - 3.5.2 Annex E2 (Staffing Information)

## **Part B: Staff transfer at the Start Date**

### **Transfer from a Former Supplier on Re-procurement**

#### **0. WHAT IS A RELEVANT TRANSFER**

0.1 The Buyer and the Supplier agree that: 0.1.1 the commencement of the provision of the Services or of any relevant part of the

Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

0.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

0.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **1. INDEMNITIES GIVEN BY THE FORMER SUPPLIER**

1.1 Subject to Paragraph 1.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

1.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

1.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 1.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
  - 1.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 1.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 1.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 1.2 The indemnities in Paragraph 1.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 1.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or

1.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.

1.3 Subject to Paragraphs 1.4 and **Error! Reference source not found.**, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:

1.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; and

1.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the Supplier;

1.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment;

1.3.4 if after the period referred to in Paragraph 1.3.2:

a) no such offer has been made;

b) such offer has been made but not accepted; or

c) The situation has not otherwise been resolved

the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;

**and subject to the Supplier's compliance with Paragraphs 1.3.1 to 1.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 1.3 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.**

1.4 The indemnity in Paragraph 1.3:

1.4.1 shall not apply to:

a) any claim for:

(i) for discrimination, including on the grounds of sex, race, disability, age,

gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or
  - b) any claim that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure; and

1.4.2 shall not apply to any termination of employment occurring later than 6 Months from the Relevant Transfer Date.

1.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 1.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

## **2. INDEMNITIES THE SUPPLIER MUST GIVE AND ITS OBLIGATIONS**

2.1 Subject to Paragraph 2.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:

- 2.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
  - a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case



may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 2.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 2.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 2.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 2.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph **Error! Reference source not found.** above

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

2.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the

Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

### **3. INFORMATION THE SUPPLIER MUST GIVE**

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

### **4. CABINET OFFICE REQUIREMENTS**

4.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in

4.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013; 4.1.2 Old Fair Deal; and/or

4.1.3 the New Fair Deal.

4.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 4.1 shall be agreed in accordance with the Change Control Procedure.

### **5. LIMITS ON THE FORMER SUPPLIER'S OBLIGATIONS**

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**6. PENSIONS**

- 6.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:
  - 6.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - 6.1.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

[Subject to Contract]  
**Schedule 7 (Staff Transfer)**  
Crown Copyright 2022

## **Part D: Pensions**

### **0. DEFINITIONS**

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

- "Actuary"** a Fellow of the Institute and Faculty of Actuaries;
- "Admission Agreement"** means either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
- "Best Value Direction"** the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
- "Broadly Comparable"**
- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
  - (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,
- and **"Broad Comparability"** shall be construed accordingly;
- "CSPA"** the schemes as defined in Annex D1 to this Part D;
- "Direction Letter/Determination"** has the meaning in **Error! Reference source not found.** to this **Error! Reference source not found.**;
- "Fair Deal Eligible"** means each of the CSPA Eligible Employees (as defined in

**Employees"**

Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph **Error! Reference source not found.** or 10 of this **Error! Reference source not found.**);

**"Fair Deal Employees"**

those:

- (a) Transferring Buyer Employees; and/or
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs **Error! Reference source not found.** of Parts A or B or Paragraph **Error! Reference source not found.** of Part C;
- (d) where the Former Supplier becomes the Supplier those employees;

who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

**"Fair Deal Schemes"**

means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

**"Fund Actuary"**

means Fund Actuary as defined in Annex D3 to this Part D;

**"LGPS"**

the schemes as defined in Annex D3 to this Part D;

**"NHSPS"**

the schemes as defined in Annex D2 to this Part D;

**"New Fair Deal"**

the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for Staff Pensions: Staff Transfer from Central Government*" issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Buyer; and

**1. SUPPLIER OBLIGATIONS TO PARTICIPATE IN THE PENSION SCHEMES**

1.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

1.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

1.3 The Supplier undertakes: 1.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

1.3.2 subject to Paragraph 10 of **Error! Reference source not found.**: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

1.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this **Error! Reference source not found.** and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

**2. SUPPLIER OBLIGATION TO PROVIDE INFORMATION**

2.1 The Supplier undertakes to the Buyer:

- 2.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 2.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
- 2.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former New Deal Eligible Employees arising on expiry or termination of this Contract.

### **3. INDEMNITIES THE SUPPLIER MUST GIVE**

- 3.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified [NHS Pensions,] the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
  - 3.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement
  - 3.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs **Error! Reference source not found.** or 10 of this **Error! Reference source not found.**;
  - 3.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses: a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
    - b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this **Error! Reference source not found.** before the date of termination or expiry of this Contract; and/or
  - 3.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term



**3.2 The indemnities in this Part D and its Annexes:**

- 3.2.1 shall survive termination of this Contract; and
- 3.2.2 shall not be affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

**4. WHAT HAPPENS IF THERE IS A DISPUTE**

4.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:

- 4.1.1 who will act as an expert and not as an arbitrator;
- 4.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
- 4.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.

4.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

**5. OTHER PEOPLE'S RIGHTS**

- 5.1 The Parties agree Clause 23 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 5.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

**6. WHAT HAPPENS IF THERE IS A BREACH OF THIS PART D**

6.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:

- 6.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 6.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any

event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

## **7. TRANSFERRING NEW FAIR DEAL EMPLOYEES**

7.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall and shall procure that any relevant Subcontractor shall:

- 7.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);
- 7.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- 7.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

## **8. WHAT HAPPENS TO PENSIONS IF THIS CONTRACT ENDS**

9.1. The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

9.2. The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## **9. BROADLY COMPARABLE PENSION SCHEMES ON THE RELEVANT TRANSFER DATE**

9.1 If the terms of any of Paragraphs **Error! Reference source not found.** of **Error! Reference source not found.**: NHSPS or 8.1 of **Error! Reference source not found.**: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service

Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

**9.2** Such Broadly Comparable pension scheme must be:

- 9.2.1 established by the Relevant Transfer Date;
- 9.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 9.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
- 9.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
- 9.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).

**9.3** Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 9, the Supplier shall (and shall procure that any of its Subcontractors shall):

- 9.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- 9.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- 9.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

- 9.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 9 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 9.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 9, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:
- 9.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 9.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 9.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 9.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 9.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

## **10. BROADLY COMPARABLE PENSION SCHEMES IN OTHER CIRCUMSTANCES**

- 10.1 If the terms of any of Paragraphs 1.2 of **Error! Reference source not found.**: CSPS, 4.2 of **Error! Reference source not found.**: NHSPS and/or **Error! Reference source not found.** of **Error! Reference source not found.**: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the date of cessation of participation in the Statutory Scheme;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
  - 10.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme

and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

## **11. RIGHT OF SET-OFF**

11.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:

- 11.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
  - 11.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
  - 11.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; and shall pay such set off amount to the relevant Statutory Scheme.
- 11.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 11.1 above.

## **Annex D1:**

### **Civil Service Pensions Schemes (CSPS)**

#### **0. DEFINITIONS**

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

#### **1. ACCESS TO EQUIVALENT PENSION SCHEMES AFTER TRANSFER**

1.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be



[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date. 1.2 If the Supplier and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with Paragraph 1.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 10 of **Error! Reference source not found.**

## Annex D2: NHS Pension Schemes

### 0. DEFINITIONS

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

**"Direction Letter/Determination"** an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;

**"NHS Broadly Comparable Employees"** means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (c) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (d) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable

**“NHSPS Eligible Employees”**

pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS. any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

**"NHSPS Fair Deal Employees"**

Means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

**"NHS Body"**

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

**"NHS Pensions"**

NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;

**"NHSPS"**

the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;

**"NHS Pension Scheme Arrears"**

any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;

**"NHS Pension Scheme Regulations"**

as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;

**"NHS Premature Retirement Rights"**

rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS

Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

**"Pension Benefits"**

any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

**"Retirement Benefits Scheme"**

a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

**1. MEMBERSHIP OF THE NHS PENSION SCHEME**

1.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.

1.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that: 1.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and

1.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.

1.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.

1.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.

1.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any

terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.

1.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 1 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

1.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

## **2. CONTINUATION OF EARLY RETIREMENT RIGHTS AFTER TRANSFER**

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

## **3. NHS BROADLY COMPARABLE EMPLOYEES**

The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 9 of **Error! Reference source not found.** For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 4.2 below.

## **4. WHAT THE BUYER WILL DO IF THE SUPPLIER BREACHES AND/OR CANCELS ITS PENSION OBLIGATIONS**

4.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.

4.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 10 of **Error! Reference source not found.**

- 4.3 If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 9 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.
- 4.4 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

## **5. COMPENSATION WHEN PENSION SCHEME ACCESS CAN'T BE PROVIDED**

- 5.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:
- 5.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
  - 5.1.2 a Broadly Comparable pension scheme, the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.
- 5.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

## **6. INDEMNITIES THAT A SUPPLIER MUST GIVE**

- 6.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

## **Annex D3:**

## Local Government Pension Schemes (LGPS)

### 1. Definitions

6.2 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"2013 Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Authority"</b>	in relation to <b>the Fund [insert name]</b> , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>
<b>["Initial Contribution Rate"]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
<b>"LGPS Eligible Employees"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and



**"LGPS Fair Deal Employees"** any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and

**"LGPS Regulations"** the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## **7. SUPPLIER MUST BECOME A LGPS ADMISSION BODY**

7.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

### **OPTION 1**

7.2 [Any LGPS Fair Deal Employees who: 7.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme)

immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and

7.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

### **OPTION 2**

[Any LGPS Fair Deal Employees whether:

7.2.1 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or

7.2.2 eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the

Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 7.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

## **8. BROADLY COMPARABLE SCHEME**

- 8.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 7.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 9 of **Error! Reference source not found..**
- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with Paragraph 7.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 10 of **Error! Reference source not found..**

## **9. DISCRETIONARY BENEFITS**

- 9.1 Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

## **10. LGPS RISK SHARING**

- 10.1 Subject to Paragraphs 10.4 to 10.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.

- 10.2 Subject to Paragraphs 10.4 to 10.9 and 10.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the “**Refund Amount**”) where:
- 10.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
- 10.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 10.3 Subject to Paragraphs 10.4 to 10.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 10.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:
- 10.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- 10.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- 10.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- 10.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- 10.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- 10.4.6 any increase to the employer contribution rate resulting from the award of pay

increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);

10.4.7 to the extent not covered above, any other costs arising out of or in connection

with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;

10.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;

10.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or

10.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.

10.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with Paragraph 10.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.

10.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.

10.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:

10.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and

10.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

- 10.8 Within twenty (20) Working Days of receiving the notification under Paragraph 10.7 above, the Buyer shall either:
- 10.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 10.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
  - 10.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 10.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 10.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 10.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 10.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 10.12 This Paragraph 10 shall survive termination of this Contract.

## **Annex D4: Other Schemes**

***[Guidance: Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]***

## **Part E: Staff Transfer on Exit**

### **0. OBLIGATIONS BEFORE A STAFF TRANSFER**

- 0.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 0.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 0.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
  - 0.1.3 the date which is 12 Months before the end of the Term; and
  - 0.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period), it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 0.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
- 0.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
  - 0.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 0.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 0.1 and 0.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 0.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 0.1 and 0.2 shall be true and accurate in all material respects at the time of providing the information.
- 0.5 From the date of the earliest event referred to in Paragraphs 0.1.1 0.1.2 and 0.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
- 0.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

- 0.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 0.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 0.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
- 0.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 0.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
- 0.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 0.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 0.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 0.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
- 0.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or reengage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));

- 0.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
  - 0.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
  - 0.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
  - 0.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 2.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 0.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 0.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 0.6.1 the numbers of employees engaged in providing the Services;
  - 0.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 0.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 0.6.4 a description of the nature of the work undertaken by each employee by location.
- 0.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:
- 0.7.1 the most recent month's copy pay slip data;
  - 0.7.2 details of cumulative pay for tax and pension purposes;



- 0.7.3 details of cumulative tax paid;
- 0.7.4 tax code;
- 0.7.5 details of any voluntary deductions from pay; and
- 0.7.6 bank/building society account details for payroll purposes.

## **1. STAFF TRANSFER WHEN THE CONTRACT ENDS**

- 1.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee
- 1.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 1.3 Subject to Paragraph 1.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
  - 1.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

- 1.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:
- a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 1.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 1.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 1.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 1.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 1.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the

failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

1.4 The indemnity in Paragraph 1.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities

1.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or

1.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

1.5 Subject to Paragraphs 1.6 and 1.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:

1.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

1.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;

1.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;

1.5.4 if after the period referred to in Paragraph 1.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

**and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 1.5.1 to 1.5.4 the**

**Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 1.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.**

1.6 The indemnity in Paragraph 1.5 shall not apply to:

1.6.1 any claim for:

- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

1.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

1.7 The indemnity in Paragraph 1.5 shall not apply to any termination of employment occurring later than 6 Months from the Service Transfer Date.

1.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 1.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 1.5 shall cease to apply to such person.

1.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

1.9.1 the Supplier and/or any Subcontractor; and

1.9.2 the Replacement Supplier and/or the Replacement Subcontractor.

1.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1.11 Subject to Paragraph 1.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:

1.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

1.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:

- a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
- b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;

1.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

1.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment

Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

1.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

1.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

1.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and 1.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such

Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

1.12 The indemnity in Paragraph 1.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 1.5 (and subject to the limitations set out in Paragraphs 1.6 and 1.7 above).

## **ANNEX E1: LIST OF NOTIFIED SUBCONTRACTORS**

## **ANNEX E2: STAFFING INFORMATION EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 1 *If you have any Key Subcontractors, please complete all the above information for any staff employed by such Key Subcontractor(s) in a separate spreadsheet.*
- 2 *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 3 *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*



[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

To be completed at award stage but TUPE information is included in Document 4 of this ITT

<b>EMPLOYEE DETAILS &amp; KEY TERMS</b>							
<b>Details</b>	<b>Job Title</b>	<b>Grade / band</b>	<b>Work Location</b>	<b>Age</b>	<b>Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?</b>	<b>Continuous service date (dd/mm/yy)</b>	<b>Date employment started with existing employer</b>
<b>Emp No 1</b>							
<b>Emp No 2</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>Emp No</b>							
---------------	--	--	--	--	--	--	--

<b>EMPLOYEE DETAILS &amp; KEY TERMS</b>							
---	--	--	--	--	--	--	--

Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>Emp No</b>							
<b>Emp No</b>							

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

Emp No								
	ASSIGNMENT		CONTRACTUAL PAY AND BENEFITS					
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>Emp No</b>									
<b>Emp No</b>									

**CONTRACTUAL PAY AND BENEFITS**

<b>Details</b>	<b>Any existing or future commitment to training that has a time-off or financial implication</b>	<b>Car allowance (£ per year)</b>	<b>Lease or company car details</b>	<b>Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)</b>	<b>Private medical insurance (please specify whether single or family cover)</b>	<b>Life assurance (xSalary)</b>	<b>Long Term Disability / PHI (% of Salary)</b>	<b>Any other benefits in kind</b>
<b>Emp No 1</b>								
<b>Emp No 2</b>								
<b>Emp No</b>								
<b>Emp No</b>								
<b>Emp No</b>								
<b>Emp No</b>								

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

Emp No								
--------	--	--	--	--	--	--	--	--

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>CONTRACTUAL PAY AND BENEFITS</b>						
<b>Details</b>	<b>Annual leave entitlement (excluding bank holidays)</b>	<b>Bank holiday entitlement</b>	<b>Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)</b>	<b>Maternity or paternity or shared parental leave entitlement and pay</b>	<b>Sick leave entitlement and pay</b>	<b>Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>PENSIONS</b>						
<b>Details</b>	<b>Employee pension contribution rate</b>	<b>Employer pension contribution rate</b>	<b>Please provide the name of the pension scheme and a link to the pension scheme website</b>	<b>Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?</b>	<b>If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?</b>	<b>Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						



<b>PENSIONS</b>						
<b>Details</b>	<b>If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.</b>	<b>If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.</b>	<b>If the Employee is in the NHSPS, please provide details of the Direction Letter.</b>	<b>If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.</b>	<b>Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?</b>	<b>If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

<b>Emp No</b>						
<b>Emp No</b>						
	<b>OTHER</b>					
<b>Details</b>	<b>Security Che<sup>k</sup> Level</b>	<b>Security Clearance Expiry date</b>	<b>Additional info or comments</b>			
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

## **Schedule 8 (Implementation Plan and Testing)**

### **Part A - Implementation**

#### **1. DEFINITIONS**

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Delay"</b>	(a) a delay in the Achievement of a Milestone by its Milestone Date; or  (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Deliverable Item"</b>	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
<b>"Implementation Period"</b>	has the meaning given to it in Paragraph 7.1;
<b>"Milestone Payment"</b>	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

#### **2. AGREEING AND FOLLOWING THE IMPLEMENTATION PLAN**

2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan **30** days after the Award Date.

2.2 The draft Implementation Plan:

- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
- 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its

[Subject to Contract]

## **Schedule 7 (Staff Transfer)**

Crown Copyright 2022

submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

### **3. REVIEWING AND CHANGING THE IMPLEMENTATION PLAN**

3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.

3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.

3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.

### **4. SECURITY REQUIREMENTS BEFORE THE START DATE**

4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.

4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.

4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.

4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.

4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.

4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

[Subject to Contract]

## **Schedule 7 (Staff Transfer)**

Crown Copyright 2022

### **5. WHAT TO DO IF THERE IS A DELAY**

5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:

- 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
- 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
- 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
- 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

### **6. COMPENSATION FOR A DELAY**

6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:

- 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
- 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
  - a) the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 (When the Buyer can end the contract); or
  - b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
- 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
- 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
- 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 15 (How much you can be held responsible for).

### **7. IMPLEMENTATION PLAN**

7.1 The Implementation Period will be a [two (2)] Month period.

7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

7.3 In accordance with the Implementation Plan, the Supplier shall:

- 7.3.1 work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
- 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
- 7.3.3 liaise with the incumbent supplier to enable the full completion of the Implementation Period activities; and
- 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.

7.4 The Implementation Plan will include detail stating:

- 7.4.1 how the Supplier will work with the incumbent supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and
- 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.

7.5 In addition, the Supplier shall:

- 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
- 7.5.2 mobilise all the Services specified in the Specification within the Contract;
- 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
  - a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
  - b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;

[Subject to Contract]

**Schedule 7 (Staff Transfer)**

Crown Copyright 2022

- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.]

## **Annex 1: Implementation Plan**

The draft Implementation Plan is set out below and the activities to be Achieved are identified below:

**REDACTED**

The organisation chart below shows the TSF organisation and management structure.

[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022

**The Share Foundation**

**Staff organisation and reporting chart2022**

**REDACTED**



[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022



[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022

Boxes in green represent those with staff management responsibilities

Boxes in blue have no staff management responsibilities

Boxes outlined in red are not funded by the JISA/CTF contract – TSF is responsible for their costs  
Boxes outlined in purple are voluntary positions and do not receive remuneration

[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022

	Timeline	Activity	Incumbent Service Provider	New Service Provider
1.	2 months from Contract Start	REDACTED	X	
2.	2 months from Contract start	REDACTED	X	
3.	1 month from contract start	REDACTED	X	
4.		REDACTED	X	
5.	Up to last day of current contract?	REDACTED	X	
6.		REDACTED	X	

[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022

7.		REDACTED	X	
----	--	----------	---	--

[Subject to Contract]

**Schedule 8 (Implementation Plan and Testing)**

Crown Copyright 2022

## **Part B – Testing**

**Not used**

## Schedule 10 (Service Levels)

### 3. DEFINITIONS

3.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Critical Service Level"	has the meaning given to it in the Award Form; <b>Failure</b> "
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Credit Cap"	has the meaning given to it in the Award Form;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
"Service Level Threshold"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

### 4. WHAT HAPPENS IF YOU DON'T MEET THE SERVICE LEVELS

4.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.

4.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.

4.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

4.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:

4.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or 4.4.2

the Service Level Failure:

(a) exceeds the relevant Service Level Threshold;

[Subject to Contract]

**Schedule 10 (Service Levels) Crown**

Copyright 2022

(b) has arisen due to a Prohibited Act or wilful Default by the Supplier; (c) results in the corruption or loss of any Government Data; and/or (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

4.4.3 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).

**4.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:**

4.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

4.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and 4.5.3 there is no change to the Service Credit Cap.

## **5. CRITICAL SERVICE LEVEL FAILURE**

**On the occurrence of a Critical Service Level Failure:**

**5.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and**

**5.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"), provided that the operation of this Paragraph 5 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.**

# **Part A: Service Levels and Service Credits**

## **6. SERVICE LEVELS**

If the level of performance of the Supplier:

**6.1 is likely to or fails to meet any Service Level Performance Measure; or 6.2 is likely to cause or causes a Critical Service Failure to occur,**

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;



[Subject to Contract]

**Schedule 10 (Service Levels) Crown**

Copyright 2022

- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

## 7. SERVICE CREDITS

7.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

7.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

## Annex A to Part A: Service Levels and Service Credits Table

Service Levels					
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	Service Credit for each Service Period	Publishable KPI
Accurate billing of Buyer	Accuracy	at least 98% at all times	[ 95 ]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure	[Yes/No]
Access to Buyer support	Availability	at least 98% at all times	[95 ]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure	[Yes/No]

[Subject to Contract]

**Schedule 10 (Service Levels) Crown**

Copyright 2022

Complaints received for accounts managed	Delivery	Nor more than 2% at all times	3%	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure	YES
--	----------	-------------------------------	----	--	-----

The Service Credits shall be calculated on the basis of the following formula:

**[Example:**

Formula: x% (Service Level Performance Measure) - x% (actual Service Level performance)

= x% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer

Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75%

(e.g. actual performance achieved against this Service Level in a Service Period)

= 23% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer]

## Part B: Performance Monitoring

### 8. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

**8.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.**

**8.2 The Supplier shall provide the Buyer with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to Paragraph Error! Reference source not found. of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:**

8.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;

8.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period; 8.2.3 details of any Critical

Service Level Failures;

8.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

8.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and

8.2.6 such other details as the Buyer may reasonably require from time to time.

**8.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a Quarterly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:**

8.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require; 8.3.2 be attended by the Supplier's

Representative and the Buyer's Representative; and 8.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.

**8.4 The minutes of the preceding Quarterss Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.**

**8.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.**

### 9. SATISFACTION SURVEYS

[Subject to Contract]

**Schedule 10 (Service Levels)** Crown

Copyright 2022

**9.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.**

Schedule

11 (Continuous Improvement)

Crown Copyright 2022

Schedule 11 (Continuous Improvement)

## Schedule 11 (Continuous Improvement)

### 1. Supplier's Obligations

- 1.1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3. In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4. The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.
- 1.5. The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working

[Subject to Contract]

**Schedule 12 (Benchmarking)**

Crown Copyright 2022

Days of receipt of notice of rejection, submit a revised Continuous Improvement

**11 (Continuous Improvement)**

Crown Copyright 2022

Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

- 1.6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7. If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
  - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11. Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12. At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

## Schedule 12 (Benchmarking)

### 1. DEFINITIONS

1.1 In this Schedule, the following expressions shall have the following meanings:

<b>"Benchmark Review"</b>	a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;
<b>"Benchmarked Deliverables"</b>	any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;
<b>"Comparable Rates"</b>	the Charges for Comparable Deliverables;
<b>"Comparable Deliverables"</b>	deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark;
<b>"Comparison Group"</b>	a sample group of organisations providing Comparable Deliverables which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;
<b>"Equivalent Data"</b>	data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;
<b>"Good Value"</b>	that the Benchmarking Rates are within the Upper Quartile; and
<b>"Upper Quartile"</b>	in respect of Benchmarking Rates, that based on an analysis of Equivalent Data, the Benchmarking Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables.

[Subject to Contract]

**Schedule 12 (Benchmarking)**

Crown Copyright 2022

**2. WHEN YOU SHOULD USE THIS SCHEDULE**

- 2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.



[Subject to Contract]

## **Schedule 12 (Benchmarking)**

Crown Copyright 2022

2.2 This Schedule sets out to ensure the Contract represents value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 of this Schedule.

2.3 Amounts payable under this Schedule shall not fall with the definition of a Cost.

### **3. BENCHMARKING**

3.1 **How benchmarking works** 3.1.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.

3.1.2 The Buyer shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Start Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.

3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.

3.1.4 The Deliverables that are to be the Benchmarked Deliverables will be identified by the Buyer in writing.

3.1.5 Upon its request for a Benchmark Review the Buyer shall nominate a benchmarker. The Supplier must approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.

3.1.6 The cost of a benchmarker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

#### **3.2 Benchmarking Process**

3.2.1 The benchmarker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:

- a) a proposed cost and timetable for the Benchmark Review;
- b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and

**Schedule 12 (Benchmarking)**

Crown Copyright 2022

- c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the benchmarker shall:
  - a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the benchmarker's professional judgment using:
    - (A) information from other service providers to the Buyer;
    - (B) survey information;
    - (C) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
    - (D) market intelligence;
    - (E) the benchmarker's own data and experience;
    - (F) relevant published information; and
    - (G) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
  - b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - c) using the Equivalent Data, calculate the Upper Quartile;
  - d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

[Subject to Contract]

## **Schedule 12 (Benchmarking)**

Crown Copyright 2022

3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- b) exchange rates;
- c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### **3.3 Benchmarking Report**

3.3.1 For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;

3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:

- a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
- b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
- c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.

3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 28 (Changing the contract).

## Schedule 13 (Contract Management)

Crown Copyright 2022

# Schedule 13 (Contract Management)

## 1. DEFINITIONS

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Operational Board"</b>	the board established in accordance with Paragraph 4.1 of this Schedule; the manager appointed in accordance with Paragraph 2.1 of
<b>"Project Manager"</b>	this Schedule;

## 2. PROJECT MANAGEMENT

2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

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

2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## 3. ROLE OF THE SUPPLIER PROJECT MANAGER

3.1 The Supplier Project Manager shall be:

- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
- 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
- 3.1.3 able to cancel any delegation and recommence the position himself; and
- 3.1.4 replaced only after the Buyer has received notification of the proposed change.

[Subject to Contract]

### **Schedule 13 (Contract Management)**

Crown Copyright 2022

- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

## **4. ROLE OF THE OPERATIONAL BOARD**

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

## **5. CONTRACT RISK MANAGEMENT**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues;and

[Subject to Contract]

### Schedule 13 (Contract Management)

Crown Copyright 2022

5.2.3 monitoring and controlling project plans.

5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.

5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Meeting	Frequency	Attendees
Keep In Touch – Quarterly KPI review meeting	Quarterly	DfE, HMRC, Supplier (TBC)

## Schedule 14 (Business Continuity and Disaster Recovery)

### 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"BCDR Plan"</b>	has the meaning given to it in Paragraph 2.1 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
<b>"Related Supplier"</b>	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule; and
<b>"Supplier's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR PLAN

2.1 At least ninety (90) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
- 2.1.2 the recovery of the Deliverables in the event of a Disaster

2.2 The BCDR Plan shall be divided into three sections:

- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
- 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
- 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **3. GENERAL PRINCIPLES OF THE BCDR PLAN (SECTION 1)**

#### 3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
  - a) failure or disruption scenarios and assessments of likely frequency of occurrence;
  - b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
  - c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
  - d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
  - e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and



[Subject to Contract]

#### **Schedule 14 (Business Continuity and Disaster Recovery)**

Crown Copyright 2022

- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. BUSINESS CONTINUITY (SECTION 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

#### **5. DISASTER RECOVERY (SECTION 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or

[Subject to Contract]

**Schedule 14 (Business Continuity and Disaster Recovery)**

Crown Copyright 2022

during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:

- 5.2.1 loss of access to the Buyer Premises;
- 5.2.2 loss of utilities to the Buyer Premises;
- 5.2.3 loss of the Supplier's helpdesk or CAFM system;
- 5.2.4 loss of a Subcontractor;
- 5.2.5 emergency notification and escalation process;
- 5.2.6 contact lists;
- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

**6. REVIEW AND CHANGING THE BCDR PLAN**

6.1 The Supplier shall review the BCDR Plan:

- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
- 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
- 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

[Subject to Contract]

## **Schedule 14 (Business Continuity and Disaster Recovery)**

Crown Copyright 2022

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. TESTING THE BCDR PLAN**

- 7.1 The Supplier shall test the BCDR Plan:
- 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:

[Subject to Contract]

**Schedule 14 (Business Continuity and Disaster Recovery)**

Crown Copyright 2022

- 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

**8. INVOKING THE BCDR PLAN**

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

**9. CIRCUMSTANCES BEYOND YOUR CONTROL**

- 9.1 The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

[Subject to Contract]

**Schedule 15 (Minimum Standards of Reliability)**

Crown Copyright 2022

## **Schedule 15 (Minimum Standards of Reliability)**

### **1. STANDARDS**

- 1.1 If this Contract has an anticipated contract value in excess of £20 million (excluding VAT) it shall not be awarded unless the Supplier can demonstrate that it meets the minimum standards of reliability as set out in the Find a Tender Service Notice ("**Minimum Standards of Reliability**") at the time of the proposed award of the Contract.
- 1.2 The Buyer shall assess the Supplier's compliance with the Minimum Standards of Reliability whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 1.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Paragraph 1.2, the Buyer shall so notify the Supplier and the Buyer reserves the right to terminate its Contract for material Default under Clause 14.4 (When the Buyer can end the contract).

## Schedule 16 (Buyer Specific Security Requirements)

### 1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement the other definitions in the Contract:

"BPSS" "Baseline Personnel Security Standard"	the Government's HMG Baseline Personal Security Standard. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
"CCSC" "Certified Cyber Security Consultancy"	is the National Cyber Security Centre's (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards.  See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyberconsultancy">https://www.ncsc.gov.uk/scheme/certified-cyberconsultancy</a>
"CCP" "Certified Professional"	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: <a href="https://www.ncsc.gov.uk/information/aboutcertified-professional-scheme">https://www.ncsc.gov.uk/information/aboutcertified-professional-scheme</a>
"CPA" "Commercial Product Assurance" [formerly called "CESG Product Assurance"]	is an 'information assurance scheme' which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website: <a href="https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa</a>

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>
---	---

	<p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: <a href="https://www.cyberessentials.ncsc.gov.uk/gettingcertified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/gettingcertified/#what-is-an-accreditation-body</a></p>
<p>“Data” “Data Controller” “Data Protection Officer” “Data Processor” “Personal Data” “Personal Data requiring Sensitive Processing” “Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Legislation</p>
<p>"Buyer's Data" “Buyer's Information”</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <ul style="list-style-type: none"><li>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:<ul style="list-style-type: none"><li>(i) supplied to the Supplier by or on behalf of the Buyer; or</li><li>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li></ul></li><li>(b) any Personal Data for which the Buyer is the Data Controller;</li></ul>

[Subject to Contract]

## Schedule 16 Buyer Specific Security Requirements

Crown Copyright 2022

“Departmental Security Standards”	the Buyer’s security policy or any standards, procedures, process or specification for security that the Supplier is required to deliver.
“Digital Marketplace / G-Cloud”	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.

“End User Devices”	the personal computer or consumer devices that store or process information.
“Good Industry Standard” “Industry Good Standard”	the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC” “GSCP”	the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
“HMG”	Her Majesty’s Government
“ICT”	Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity



[Subject to Contract]

## Schedule 16 Buyer Specific Security Requirements

Crown Copyright 2022

“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	the National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for

	Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL”  “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).  the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	Role Based Access Control, a method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
“Storage Area Network” “SAN”	an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.

[Subject to Contract]

## Schedule 16 Buyer Specific Security Requirements

Crown Copyright 2022

<p>“Secure Sanitisation”</p>	<p>the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: <a href="https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media">https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction-0">https://www.cpni.gov.uk/secure-destruction-0</a></p>
<p>“Security and Information Risk Advisor” “CCP SIRA” “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme">https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme</a></p>
<p>“Senior Information Risk Owner” “SIRO”</p>	<p>the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm’s length bodies (ALBs), nondepartmental public bodies (NDPBs) and devolved information held by third parties.</p>
<p>“SPF” “HMG Security Policy Framework”</p>	<p>the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>

## Operative Provisions

1.1. The Supplier shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable Departmental Security

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

Standards which include but are not constrained to the following paragraphs.

- 1.2. Where the Supplier will provide products or Services or otherwise handle information at OFFICIAL for the Buyer, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract”. The certification scope shall be relevant to the Services supplied to, or on behalf of, the Buyer.
- 1.3. Where paragraph 10.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services supplied to, or on behalf of, the Buyer. The scope of certification and the statement of applicability must be acceptable, following review, to the Buyer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Buyer’s Data being handled in the course of providing the Services and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Buyer’s Data).
- 1.5. Buyer’s Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Supplier’s or subcontractor’s own IT equipment to protect the Buyer’s Data and enable the data to be identified and securely deleted when required in line with paragraph 10.14.
- 1.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- 1.7. The Supplier shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Buyer’s Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Buyer’s Data or systems shall be considered to be sensitive data and must be protected accordingly.

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

- 1.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Buyer's Data, including but not limited to:
  - 1.8.1. physical security controls;
  - 1.8.2. good industry standard policies and processes;
  - 1.8.3. malware protection;
  - 1.8.4. boundary access controls including firewalls, application gateways, etc;
  - 1.8.5. maintenance and use of fully supported software packages in accordance with vendor recommendations;
  - 1.8.6. use of secure device configuration and builds;
  - 1.8.7. software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  - 1.8.8. user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
  - 1.8.9. any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
    - 1.8.9.1. retained and protected from tampering for a minimum period of six months;
    - 1.8.9.2. made available to the department on request.
- 1.9. The Supplier shall ensure that any Buyer's Data (including email) transmitted over any public network (including the Internet, mobile networks or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10. The Supplier shall ensure that any Buyer's Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.
- 1.11. The Supplier shall ensure that any device which is used to process Buyer's Data meets all of the security requirements set out in the NCSC End User

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eudoverview/eud-security-principles>.

- 1.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Buyer's Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 1.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Buyer's Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.

- 1.14. The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 1.15. In the event of termination of Contract due to expiry, as a result of an Insolvency Event or for breach by the Supplier, all information assets provided, created or resulting from provision of the Services shall not be considered as the Supplier's assets and must be returned to the Buyer and written assurance obtained from an appropriate officer of the Supplier that these assets regardless of location and format have been fully sanitised throughout the Supplier's organisation in line with paragraph 2.15.

- 1.16. In the event of termination, equipment failure or obsolescence, all Buyer's Data and Buyer's Information, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC-approved product or method.

- 1.17. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier shall protect

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

(and ensure that any sub-contractor protects) the Buyer's Information and Buyer's Data until such time, which may be long after termination or expiry of the Contract, when it can be securely cleansed or destroyed.

- 1.18. Evidence of secure destruction will be required in all cases.
- 1.19. Access by Supplier Staff to Buyer's Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Buyer. All Supplier Staff must complete this process before access to Buyer's Data is permitted. [Any Supplier Staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact].
- 1.20. All Supplier Staff who handle Buyer's Data shall have annual awareness training in protecting information.
- 1.21. Notwithstanding any other provisions as to business continuity and disaster recovery in the Contract, the Supplier shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services delivered. If an ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.22. Any suspected or actual breach of the confidentiality, integrity or availability of Buyer's Data, including user credentials, used or handled in the course of providing the Services shall be recorded as an incident. This includes any non-compliance with the Departmental Security Standards and these provisions, or other security standards pertaining to the solution.
- 1.23. Incidents shall be reported to the Buyer immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the Supplier should provide an explanation about the delay.
- 1.24. Incidents shall be reported through the Buyer's nominated system or service owner.

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

- 1.25. Incidents shall be investigated by the Supplier with outcomes being notified to the Buyer.
- 1.26. The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process Buyer's Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Services being provided are to be shared with the Buyer and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.27. The Supplier or sub-contractors providing the Services will provide the Buyer with full details of any actual or future intent to develop, manage, support, process or store Buyer's Data outside of the UK mainland. The Supplier or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Buyer.
- 1.28. The Buyer reserves the right to audit the Supplier or sub-contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Supplier's, and any sub-contractors', compliance with the paragraphs contained in this Schedule.
- 1.29. The Supplier and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Buyer. This will include obtaining any necessary professional security resources required to support the Supplier's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- 1.30. Where the Supplier is delivering an ICT solution to the Buyer they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Buyer's Policy. The Supplier will provide the Buyer with evidence of compliance for the solutions and services to be delivered. The Buyer's expectation is that the Supplier shall provide written evidence of:
  - 1.30.1. compliance with HMG Minimum Cyber Security Standard.
  - 1.30.2. any existing security assurance for the Services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.

[Subject to Contract]

**Schedule 16 Buyer Specific Security Requirements**

Crown Copyright 2022

- 1.30.3. any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
  - 1.30.4. documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be and date expected.
- 1.31. The Supplier shall contractually enforce all the Departmental Security Standards and these provisions onto any third-party suppliers, subcontractors or partners who could potentially access Buyer's Data in the course of providing the Services.



## Schedule 18 (Supply Chain Visibility)

### 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities;
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of this Schedule 18; and
<b>"Unconnected Sub-contract"</b>	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017
<b>Sub- Supplier enters into an "Unconnected Sub-contract"</b>	any third party with whom the Unconnected Sub-contract

### 2. VISIBILITY OF SUB-CONTRACT OPPORTUNITIES IN THE SUPPLY CHAIN

2.1 The Supplier shall:

- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;

[Subject to Contract]

**Schedule 18 (Supply Chain Visibility) Crown**

Copyright 2022

- 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
  - 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
  - 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and
  - 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 18 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligations on the Supplier set out at Paragraph 2.1 shall only apply in respect of SubContract opportunities arising after the Start Date.
- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a SubContract opportunity is not required to be advertised by the Supplier on Contracts Finder.

**3. VISIBILITY OF SUPPLY CHAIN SPEND**

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the "SME Management Information Reports") to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
- 3.1.1 the total contract revenue received directly on the Contract;
  - 3.1.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - 3.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1.1 –3.1.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version. The Buyer agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

#### **4 Visibility of Payment Practice**

- 1.1 If this Contract has at the Start Date an anticipated contract value in excess of £5 million per annum (excluding VAT) averaged over the Contract Period and without prejudice to Clause 4.6, Clause 8.2.1(b) and 8.2.2(b), the Supplier shall:
- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
    - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
    - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
  - (b) include within the Supply Chain Information Report a summary of its compliance with this Paragraph 4.4, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 1.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide to the Buyer within 15 Working Days of submission of the latest Supply Chain Information Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:
- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
  - (b) actions to address each of the causes set out in Sub-Paragraph (a); and
  - (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 1.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 1.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors

[Subject to Contract]

**Schedule 18 (Supply Chain Visibility) Crown**

Copyright 2022

which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).

- 1.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Subcontractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

## Annex 1 - Supply Chain Information Report template

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



## Schedule 19 (Cyber Essentials Scheme)

### 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>"Cyber Essentials Basic Certificate"</b>	the certificate awarded on the basis of selfassessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2. WHAT CERTIFICATION DO YOU NEED

2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate prior to *contract award* the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under the Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.

**Schedule 19 (Cyber Essential Scheme)**

Crown Copyright 2022

- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Start date of the Contract but before the end of the Contact Period, the Supplier shall deliver to the Buyer evidence of:
  - 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
- 2.6 This Schedule shall survive termination or expiry of this Contract.



## **Schedule 20 (Processing Data)**

**1. Status of the Controller** 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- 1.1.1 “Controller” in respect of the other Party who is “Processor”;
- 1.1.2 “Processor” in respect of the other Party who is “Controller”;
- 1.1.3 “Joint Controller” with the other Party;
- 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”, in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### **2. Where one Party is Controller and the other Party its Processor**

- 2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.3 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:
  - 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - 2.4.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;

[Subject to Contract]

2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, 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:

- a) nature of the data to be protected;

**Schedule 20 (Processing Data)**

Crown Copyright 2022

- b) harm that might result from a Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

**2.4.3** ensure that:

- a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
- b) it uses all reasonable endeavours 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 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - (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 the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

**2.4.4** not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- a) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
- b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "**IDTA**"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time, as well as any additional measures determined by the Controller;
- c) the Data Subject has enforceable rights and effective legal remedies;

**Schedule 20 (Processing Data)**

Crown Copyright 2022

- d) 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
  - e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 2.4.5 where the Personal Data is subject to EU GDPR, not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the EU GDPR; or
  - b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
  - c) the Data Subject has enforceable rights and effective legal remedies;
  - d) 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
  - e) 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
- 2.4.6 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.
- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;
  - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

[Subject to Contract]

**Schedule 20 (Processing Data)**

Crown Copyright 2022

- 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 2.5.5 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
  - 2.5.6 becomes aware of a Personal Data Breach.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 2.7.5 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.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 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
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

[Subject to Contract]

## **Schedule 20 (Processing Data)**

Crown Copyright 2022

- 2.11 Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
  - 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 2.11.2 obtain the written consent of the Controller;
  - 2.11.3 enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
  - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **3. Where the Parties are Joint Controllers of Personal Data**

- 3.1 In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 20 (*Processing Data*).

### **Independent Controllers of Personal Data**

- 3.2 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.
- 3.3 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.
- 3.4 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, 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.
- 3.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 3.6 The Parties shall only provide Personal Data to each other:
  - 3.6.1 to the extent necessary to perform their respective obligations under the Contract;

Mid-tier contract – Version 1.1

**Schedule 20 (Processing Data)**

Crown Copyright 2022

- 3.6.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
- 3.6.3 where it has recorded it in Annex 1 (*Processing Personal Data*).
- 3.7 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.
- 3.8 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 3.9 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 the Contract ("**Request Recipient**"):
- 3.9.1 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
- 3.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- a) 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
- b) 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.
- 3.10 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- 3.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
- 3.10.2 implement any measures necessary to restore the security of any compromised Personal Data;
- 3.10.3 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

[Subject to Contract]

**Schedule 20 (Processing Data)**

Crown Copyright 2022

(including the timeframes set out therein); and

- 3.10.4 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.
- 3.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
- 3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
- 3.13 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.



## **Annex 1 - Processing Personal Data**

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
  - 1.1 The contact details of the Buyer's Data Protection Officer are: Emma.  
Wharram@education.gov.uk
  - 1.2 The contact details of the Supplier's Data Protection Officer are: **Anthony Walker**  
**anthony.walker@sharefound.org**
  - 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
  - 1.4 Any such further instructions shall be incorporated into this Annex.
  
2. Any separate bilateral agreements entered into with local authorities by the Contractor, to receive and hold data on young people post-18 to assist them in accessing their savings accounts, where a LA has not engaged pre-18 to advise a young person of their accounts, are excluded from the Contract and the requirements within this Schedule 20.

<b>Description</b>	<b>Details</b>
--------------------	----------------

<p>Identity of Controller for each Category of Personal Data</p>	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>Data required on Looked After children to the extent that is required to operate the Junior ISA and CTF schemes on behalf of the Department for Education. See below for the type of personal data required.</p> <p>Data pertaining to local authority staff who are appointed by the local authority to be the liaison between The Share Foundation and the authority.</p> <p>Data pertaining to JISA/CTF provider staff who are appointed by the provider to be the liaison between The Share Foundation and the provider.</p> <p><b>The Supplier is Controller and the Buyer is Processor</b></p>
--	---

	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with Paragraph 2 of the following Personal Data:</p> <p><b>The Parties are Joint Controllers</b></p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>● <i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i></li> <li>● <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is the Controller,</i></li> </ul>
<p>Duration of the Processing</p>	<p>The contractor is appointed to process data for the duration of the contract between The Share Foundation and the Department for Education to operate the JISA/CTF schemes on behalf of the department.</p>
<p>Nature and purposes of the Processing</p>	<p>Data will be collected for the sole purpose of operating the JISA/CTF contract on behalf of the Department for Education. Data collected will be stored in an appropriate secure location and may be retrieved, transmitted and disseminated in furtherance of the objectives of the contract.</p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p> <p>The purpose of processing the data is to open and maintain savings accounts on behalf of Looked After children until they leave care, at which time the accounts will be transferred to the individual's responsibility (if over 16) or to a responsible adult (if the beneficiary is under 16).</p>

**Schedule 20 (Processing Data)**

<p>Type of Personal Data</p>	<p>Personal data collected is a minimal dataset to ensure qualification for a Junior ISA/Child Trust Fund account and to enable an account to be opened and/or maintained by the data processor until it is transferred to the account beneficiary or to a new responsible adult.</p> <p>Data includes:</p> <ul style="list-style-type: none"> <li>• Forename</li> <li>• Family name</li> <li>• Gender</li> <li>• Date of Birth</li> <li>• Confirmation of UK residency</li> <li>• Date entered care</li> <li>• Confirmation of Looked After status</li> <li>• Local Authority reference number for the data subject</li> </ul>
<p>Categories of Data Subject</p>	<p>Looked After children who are aged under 18 and have been in care of a local authority for an unbroken period of at least one year.</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	<p>Data is retained for as long as is necessary to open and/or maintain responsibility for a Junior ISA or Child Trust Fund account until the account beneficiary has taken over responsibility for the account.</p>
<p>Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract</p>	<p>UK.</p>

[Subject to Contract]

**Schedule 20 (Processing Data)**

Crown Copyright 2022

Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal	
Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	



## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing the Contract)

<b>Contract Details</b>	
This variation is between:	[Buyer] ("the Buyer") And [insert name of Supplier] ("the Supplier")
Contract name:	[insert name of contract to be changed] ("the Contract")
Contract reference number:	[insert contract reference number]
<b>Details of Proposed Variation</b>	
Variation initiated by:	[delete as applicable: Buyer/Supplier]
Variation number:	[insert variation number]
Date variation is raised:	[insert date]
Proposed variation	
Reason for the variation:	[insert reason]
An Impact Assessment shall be provided within:	[insert number] days
<b>Impact of Variation</b>	
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]
<b>Outcome of Variation</b>	
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li>• [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]</li> </ul>
Financial variation:	Original Contract Value: £ [insert amount]

**Schedule 21 (Variation Form) Crown**  
Copyright 2022

	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.



Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

---

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## **Schedule 22 (Insurance Requirements)**

### **1. The insurance you need to have**

1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and

1.2 The Insurances shall be:

1.2.1 maintained in accordance with Good Industry Practice;

1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;

1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and

1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.

1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### **2. How to manage the insurance**

2.1 Without limiting the other provisions of this Contract, the Supplier shall:

2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

**Schedule 22 (Insurance Requirements)**

Crown Copyright 2022

**3. What happens if you aren't insured**

3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

**4. Evidence of insurance you must provide**

4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

**5. Making sure you are insured to the required amount**

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

**6. Cancelled Insurance**

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

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

**7. Insurance claims**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a

[Subject to Contract]

**Schedule 22 (Insurance Requirements)**

Crown Copyright 2022

claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of £60,000 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

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

#### **1 Insured**

3.1 The Supplier

#### **4 Interest**

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

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

(b) loss of or damage to physical property;

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

#### **5 Limit of indemnity**

5.1 Not less than **£3M** in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but **£5M** in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

#### **6 Territorial limits**

**United Kingdom**

#### **7 Period of insurance**

7.1 From the date of this Contract for the period of the Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

#### **8 Cover features and extensions**

8.1 Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

#### **9 Principal exclusions**

9.1 War and related perils.

9.2 Nuclear and radioactive risks.

[Subject to Contract]

**Schedule 22 (Insurance Requirements)**

Crown Copyright 2022

- 9.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 9.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 9.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 9.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 9.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 9.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

**10 Maximum deductible threshold**

- 10.1 Not to exceed **£473,379.80** for each and every third party property damage claim (personal injury claims to be paid in full).

**PART B: UNITED KINGDOM COMPULSORY INSURANCES**

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

**PART C: ADDITIONAL INSURANCES**

**DATA PROTECTION LIABILITY INSURANCE -TOTAL AGGREGATE LIABILITY IS NO MORE THAN £10M.**

## **Schedule 23 (Guarantee) -NOT USED**

### **1. Definitions**

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Guarantee"</b>	a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and
<b>"Guarantor"</b>	the person acceptable to a Buyer to give a Guarantee;

**2. Guarantee** 2.1 Where a Buyer has notified the Supplier that the award of the Contract by the Buyer shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of the Contract, as a condition for the award of the Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Guarantee from a Guarantor; and

2.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

2.2 Where a Buyer has procured a Guarantee from the Supplier under Paragraph 2.1 above, the Buyer may terminate the Contract for material Default where:

2.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

2.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

2.2.3 an Insolvency Event occurs in respect of the Guarantor;

2.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever; or

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.

## **Annex 1 – Form of Guarantee**

**[INSERT NAME OF THE GUARANTOR] -**

**AND -**

[Subject to Contract]  
**Schedule 23 (Guarantee)**  
Crown Copyright 2022

**[INSERT NAME OF THE BENEFICIARY]**

## **DEED OF GUARANTEE**



## DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the                    day of                    20[ ]

### PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")

### WHEREAS:

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

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

## 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

***[Guidance Note: Insert and/or settle Definitions, including from the following list]***

<b>"Beneficiary(s)"</b>	means all the Buyer(s) under a Contract [Insert name of the Buyer with whom the Supplier enters into the Contract] and "Beneficiaries" shall be construed accordingly;
<b>"Goods"</b>	has the meaning given to it in the Contract;
<b>"Guaranteed Agreement"</b>	means the contract with Contract Reference [Insert contract reference number] for the Goods and/or Services dated on or about the date hereof made between the Beneficiary and the Supplier;

<b>"Guaranteed Obligations"</b>	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
<b>"Services"</b>	has the meaning given to it in the Contract;
<b>"Supplier"</b>	means [ <b>Insert</b> the name, address and registration number of the Supplier as each appears in the Award Form].

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

**Schedule 23 (Guarantee)**

Crown Copyright 2022

- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

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

[Subject to Contract]

### **Schedule 23 (Guarantee)**

Crown Copyright 2022

Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

## **4. DEMANDS AND NOTICES**

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

[Insert Address of the Guarantor in England and Wales]

[Insert Facsimile Number] For the

Attention of [Insert details]

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

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

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

## **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
  - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

**Schedule 23 (Guarantee)**

Crown Copyright 2022

- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

**6. GUARANTOR INTENT**

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

**7. RIGHTS OF SUBROGATION**

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- 7.1.1 of subrogation and indemnity;
  - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and 7.1.3 to prove in the liquidation or insolvency of the Supplier,
- only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

**8. DEFERRAL OF RIGHTS**

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the

[Subject to Contract]

## **Schedule 23 (Guarantee)**

Crown Copyright 2022

Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
- 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- 8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a contract pursuant to Clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - c) the terms of any agreement or other document to which the

Guarantor is a Party or which is binding upon it or any of its assets;

- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10. PAYMENTS AND SET-OFF**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

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

## **12. ASSIGNMENT**

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



### **13. SEVERANCE**

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

### **14. THIRD PARTY RIGHTS**

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

### **15. SURVIVAL**

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

### **16. GOVERNING LAW**

16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

***[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]***

16.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the

[Subject to Contract]

**Schedule 23 (Guarantee)**

Crown Copyright 2022

Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

## **Schedule 24 (Financial Difficulties)**

**2. Definitions** 2.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>“Applicable Financial Indicators”</b>	means the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3;
<b>"Credit Rating Threshold"</b>	the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;
<b>“Credit Reference Agencies”</b>	the credit reference agencies listed in Part B of Annex 1;
<b>“Credit Score Notification Trigger”</b>	the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event;
<b>“Credit Score Notification Trigger Event”</b>	any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;
<b>"Credit Score Threshold"</b>	the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2;
<b>"Financial Distress Service Continuity Plan"</b>	a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
<b>“Financial Indicators”</b>	in respect of the Supplier, Key Subcontractors and the Guarantor, means each of the financial indicators set out at Part C of Annex 2; and in respect of each Monitored

<b>“Financial Target Thresholds”</b>	Supplier, means those Applicable Financial Indicators; means the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;
<b>“Primary Metric”</b>	[credit rating pursuant to Paragraph 4.3]/[credit score pursuant to Paragraph 5.3]/[financial indicators pursuant to Paragraph 6.4]
<b>"Monitored Supplier"</b>	those entities specified in Part B of Annex 3; and
<b>"Rating Agencies"</b>	the rating agencies listed in Part A of Annex 1.

**3. When this Schedule applies** 3.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.

3.2 The terms of this Schedule shall survive under the Contract until the termination or expiry of the Contract.

**4. Credit Ratings** 4.1 The Supplier warrants and represents to the Buyer that as at the Start Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2.

4.2 The Supplier shall:

4.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and

4.2.2 promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.

4.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 9 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

**5. Credit Scores** 5.1 The Supplier warrants and represents to the Buyer that as at the Start Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.

5.2 The Supplier shall:

[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

- 5.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
  - 5.2.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within five (5) Working Days).
- 5.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 9 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.

**6. Financial Indicators** 6.1 The Supplier shall monitor and report on the Financial Indicators

for each entity in the FDE

Group against the Financial Target Thresholds at least at the frequency set out for each at Part C of Annex 2 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date

- 6.2 Subject to the calculation methodology set out at **Error! Reference source not found.** of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: Standard Financial Ratios of *Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Start Date can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987132/Assessing\\_and\\_monitoring\\_the\\_economic\\_and\\_financial\\_standing\\_of\\_suppliers\\_guidance\\_note\\_May\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf)

- 6.3 Each report submitted by the Supplier pursuant to Paragraph 6.1 shall:

- 6.3.1 be a single report with separate sections for each of the FDE Group entities;
- 6.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
- 6.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; and
- 6.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable.

[Subject to Contract]

## **Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

- 6.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 9 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
- 6.4.1 a report submitted by the Supplier pursuant to Paragraph 6.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any one of the Financial Indicators set out in Part C of Annex 2 of this Schedule;
  - 6.4.2 a report submitted by the Supplier pursuant to Paragraph 6.1 does not comply with the requirements set out in Paragraph 6.3; or
  - 6.4.3 the Supplier does not deliver a report pursuant to Paragraph 6.1 in accordance with the applicable monitoring and reporting frequency.

## **7. What happens if there is a financial distress event**

- 7.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 7.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 7.4 to 7.6.

### **USE OF 6.3 TO BE CONFIRMED ON SUBMISSION OF BIDS**

- 7.3 [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 7.4 without first giving the Supplier ten (10) Working Days to:
- 7.3.1 rectify such late or non-payment; or
  - 7.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]
- 7.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
- 7.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance the Contract; and

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

7.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 7.4.1) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:

- a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);
- b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and
- c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.

7.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:

7.5.1 Approved;

7.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or

7.5.3 finally rejected by the Buyer.

7.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:

7.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance the Contract and delivery of the Deliverables in accordance with the Contract;

7.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 7.6.1 to the Buyer;

7.6.3 where the Financial Distress Service Continuity Plan is not adequate

or up to date in accordance with Paragraph 7.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 7.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

7.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

7.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 7.6.

## **8. When the Buyer can terminate for financial distress**

8.1 The Buyer shall be entitled to terminate this Contract for material Default if:

8.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 7.1;

8.1.2 the Supplier fails to comply with any part of Paragraph 7.4;

8.1.3 subject to Paragraph 8.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 7.5.3;

8.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 7.5.2;

8.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 7.5.2; and/or

8.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 7.6.4.

8.2 A material Default may only occur under Paragraph 8.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

## **9. What happens If your Primary Metric is still good**

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 8, if, following the occurrence of a Financial Distress Event, the Supplier evidences to



[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

9.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 7.4 to 7.6;  
and

9.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 7.4.2c).

[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

# **ANNEX 1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES**

## **Part A: Rating Agencies**

Rating Agency Graydon

## **Part B: Credit Reference Agencies**

Credit Reference Agency Graydon

[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

## **ANNEX 2: CREDIT RATINGS, CREDIT SCORES AND FINANCIAL INDICATORS**

### **Part A: Credit Rating**

<b>Entity</b>	<b>Credit rating (long term)</b>	<b>Credit Rating Threshold</b>
Supplier	487	
Guarantor	N/A	N/A
[Key Subcontractor]	N/A	N/A
[Monitored Supplier]	N/A	N/A

### **Part B: Credit Score**

<b>Entity</b>	<b>Credit score</b>	<b>Credit Score Notification Trigger</b>	<b>Credit Score Threshold</b>
Supplier	AA(Auger score 487)		
Guarantor	N/A	N/A	N/A
[Key Subcontractor]	N/A	N/A	N/A
[Monitored Supplier]	N/A	N/A	N/A

### **Part C: Financial Indicators**

<b>Financial Indicator</b>	<b>Calculation<sup>1</sup></b>	<b>Financial Target Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
<b>1</b> <b>Operating Margin</b>	Operating Margin = Operating Profit / Revenue	> 5%	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures for the 12 months

[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

<b>Financial Indicator</b>	<b>Calculation<sup>1</sup></b>	<b>Financial Target Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
			ending on the relevant accounting reference date
<b>2 Turnover</b>	Turnover / Annual Contract Value	>1.5	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date
<b>3 Acid Ratio</b>	Acid Ratio = (Current Assets – Inventories) / Current Liabilities	>0.8	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date

Key: <sup>1</sup> – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

## **ANNEX 3 – ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS**

### **Part A: Additional FDE Group Members**

1. [[Guarantor]
2. [Key-Subcontractors]; and
3. [Monitored Suppliers];

[Subject to Contract]

**Schedule 24 (Financial Difficulties)**

Crown Copyright 2022

**Part B: Monitored Suppliers**

<b>Entity Name</b>	<b>Company Number</b>	<b>Applicable Financial Indicators</b>  (these are the Financial Indicators from the table in Part C of Annex 2 which are to apply to the Monitored Suppliers)

## Schedule 25 (Rectification Plan)

Request for <b>[Revised]</b> Rectification Plan		
Details of the Notifiable Default:	<b>[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]</b>	
Deadline for receiving the <b>[Revised]</b> Rectification Plan:	<b>[add]</b> date (minimum 10 days from request)	
Signed by Buyer:		Date: <input type="text"/>
Supplier <b>[Revised]</b> Rectification Plan		
Cause of the Notifiable Default	<b>[add]</b> cause]	
Anticipated impact assessment:	<b>[add]</b> impact]	
Actual effect of Notifiable Default:	<b>[add]</b> effect]	
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>
	1.	<b>[date]</b>
	2.	<b>[date]</b>
	3.	<b>[date]</b>
	4.	<b>[date]</b>
	<b>[...]</b>	<b>[date]</b>
Timescale for complete Rectification of Notifiable Default	<input checked="" type="checkbox"/> Working Days	
Steps taken to prevent recurrence of Notifiable Default	<b>Steps</b>	<b>Timescale</b>
	1.	<b>[date]</b>
	2.	<b>[date]</b>
	3.	<b>[date]</b>
	4.	<b>[date]</b>

**Schedule 25 (Rectification Plan)**

Crown Copyright 2022

	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## **Schedule 26 (Sustainability)**

### **Definitions**

- [“Modern Slavery Assessment Tool”]** means the modern slavery risk identification and management tool which can be found online at: <https://supplierregistration.cabinetoffice.gov.uk/msat>
- [“Supply Chain Map”]** means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:
- (e) the name, registered office and company registration number of each entity in the supply chain;
  - (f) the function of each entity in the supply chain; and
  - (g) the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]
- “Waste Hierarchy”** means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:
- (h) Prevention;
  - (i) Preparing for re-use;
  - (j) Recycling;
  - (k) Other Recovery; and (l) Disposal.

## **Part A**

### **1. Public Sector Equality Duty**

1.1. In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

1.1.1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2. advance:

1.1.2.1. equality of opportunity; and

1.1.2.2. good relations,



between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## **2. Employment Law**

2.1. The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

## **3. Modern Slavery**

3.1. The Supplier:

- 3.1.1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
- 3.1.3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 3.1.4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 3.1.5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8. shall prepare and deliver to the Buyer, 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 with its annual certification of compliance with this Paragraph 3;
- 3.1.9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other

harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

3.1.10. shall not use or allow child or slave labour to be used by its Subcontractors; and

3.1.11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

#### **4. Environmental Requirements**

4.1. The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.

4.2. In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:

4.2.1. prioritise waste management in accordance with the Waste Hierarchy as set out in Law;

4.2.2. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and

4.2.3. ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.

4.3. In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.

4.4. In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

4.5. The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

[Subject to Contract]

**Schedule 26 (Sustainability)**

Crown Copyright 2022

**5. Supplier Code of Conduct**

5.1. In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

**6. Reporting**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, [provided that such requests are limited to [two] per requirement per Contract Year].

**Part B - NOT USED Part C**

**1. Social Value**

1.1 The Supplier shall provide a Social Value Report to the Buyer as outlined in Table A.

**Table A: Social Value Report**

<b>Required Detail</b>	<b>Frequency</b>
A high-level summary of the Supplier's performance against the Social Value priorities over the relevant period	[Quarterly]
Performance by the Supplier against each of the Social Value KPIs set out at Table B over the relevant period	[Quarterly]
[Insert any other requirements]	

**Table B: Social Value KPIs**

[Subject to Contract]

**Schedule 26 (Sustainability)**

Crown Copyright 2022

No.	Social Value Title	Description of Deliverable	Target	Frequency of Measurement	Publishable Performance Information  <i>[Guidance: It is HMG's intention to publish the top Social Value KPI for the Government's most important contracts. Where this publication requirement applies to this Contract, the Authority may use the below to select the single most important Social Value KPI, which may be publishable]</i>
Social Value KPI1	[e.g. Reducing the disability employment gap]	[e.g. Number of disabled people in the contract workforce]	[e.g. 2%]	[Quarterly]	[YES/NO]
Social Value KPI2					[YES/NO]
Social Value KPI3					[YES/NO]



## **Schedule 27 (Key Subcontractors)**

### **1. Restrictions on certain subcontractors**

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Subcontract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.
- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;

[Subject to Contract]

- 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key SubContract which confer a benefit upon the Buyer;

96

### **Schedule 27 (Key Subcontractors)**

Crown Copyright 2022

- 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
    - a) the data protection requirements set out in Clause 18 (Data protection);
    - b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
    - c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this contract) and 14.5 (What happens if the contract ends) of this Contract;
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
  - 1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

## **Schedule 28 (ICT Services)**

### **1. Definitions**

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
<b>"Defect"</b>	any of the following: <ol style="list-style-type: none"><li>a) any error, damage or defect in the manufacturing of a Deliverable; or</li><li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li></ol>



[Subject to Contract]

- c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or

	<p>d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;</p>
<b>"Emergency Maintenance"</b>	<p>ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;</p>
<b>"ICT Environment"</b>	<p>the Buyer System and the Supplier System;</p>
<b>"Licensed Software"</b>	<p>all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any COTS Software;</p>
<b>"Maintenance Schedule"</b>	<p>has the meaning given to it in Paragraph 8 of this Schedule;</p>
<b>"Malicious Software"</b>	<p>any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;</p>
<b>"New Release"</b>	<p>an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;</p>
<b>"Open Source Software"</b>	<p>computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any</p>

<b>"Operating Environment"</b>	and all persons and for any and all purposes free of charge; means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"><li>a) the Deliverables are (or are to be) provided; or</li><li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or</li><li>c) where any part of the Supplier System is situated;</li></ul>
<b>"Permitted Maintenance"</b>	has the meaning given to it in Paragraph 8.2 of this Schedule;
<b>"Quality Plans"</b>	has the meaning given to it in Paragraph 6.1 of this Schedule;
<b>"Sites"</b>	has the meaning given to it in Schedule 1 (Definitions), and for the purposes of this Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
<b>"Software"</b>	Specially Written Software, COTS Software and non-COTS Supplier and third party Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in Paragraph <b>Error! Reference source not found.</b> of this Schedule;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

**"Specially Written Software"**

any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**"Supplier System"**

the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

## **2. When this Schedule should be used**

2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

## **3. Buyer due diligence requirements**

3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;

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

3.1.2. operating processes and procedures and the working methods of the Buyer;

3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and

3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.

3.2. The Supplier confirms that it has advised the Buyer in writing of:

- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
- 3.2.2. the actions needed to remedy each such unsuitable aspect; and
- 3.2.3. a timetable for and the costs of those actions.

#### **4. Licensed software warranty**

4.1. The Supplier represents and warrants that:

- 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any SubContractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
- 4.1.2. all components of the Specially Written Software shall:
  - 4.1.2.1. be free from material design and programming errors;
  - 4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Schedule 10 (Service Levels) and Documentation; and
  - 4.1.2.3. not infringe any IPR.

#### **5. Provision of ICT Services**

5.1. The Supplier shall:

- 5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
- 5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3. ensure that the Supplier System will be free of all encumbrances;
- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

#### **6. Standards and Quality Requirements**

6.1. The Supplier shall develop, in the timescales specified in the Award Form, quality plans that ensure that all aspects of the Deliverables are the subject

of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Contract Period:
  - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
  - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
  - 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## **7. ICT Audit**

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## **8. Maintenance of the ICT Environment**

- 8.1. If specified by the Buyer in the Award Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

- 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## **9. Intellectual Property Rights in ICT**

### **Assignments granted by the Supplier: Specially Written Software**

- 9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
- 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
- 9.1.2. The Supplier shall:
- 9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
  - 9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
  - 9.1.2.3. without prejudice to Paragraph **Error! Reference source not found.**, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially

Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sublicense and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

9.2.1.1. of its own Existing IPR that is not COTS Software;

9.2.1.2. third party software that is not COTS Software.

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph **[Error! Reference source not found.Error! Reference source not found.]**. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at Paragraph



**[Error! Reference source not found.]** if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph **[Error! Reference source not found.]** above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under Paragraph **[Error! Reference source not found.]** by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

### **9.3. Licences for COTS Software by the Supplier and third parties to the Buyer**

9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph **[Error! Reference source not found.]** the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer;  
or

9.3.4.2. will no longer be made commercially available.

### **9.4. Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph **[Error! Reference source not found.]** (*Licences for non-COTS IPR from the Supplier and third parties to the Buyer*) to:

9.4.1.1. a Central Government Body; or

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

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [**Error! Reference source not found.**] and/or [9.2].

## **9.5. Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, nontransferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).

## **9.6. Open Source Publication**

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

9.6.1.1. suitable for publication by the Buyer as Open Source; and

9.6.1.2. based on Open Standards (where applicable), and the Buyer

may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;

9.6.2.3. do not contain any material which would bring the Buyer into disrepute;

- 9.6.2.4. can be published as Open Source without breaching the rights of any third party;
  - 9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and
  - 9.6.2.6. do not contain any Malicious Software.
- 9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
- 9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
  - 9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7. Malicious Software**

- 9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph [9.7.2] shall be borne by the Parties as follows:
  - 9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **Schedule 29 (Key Supplier Staff)**

- 1.1 The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date (“**Key Staff**”).
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
  - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

[Subject to Contract]

Version 1.1

**Schedule 29 (Key Supplier Staff)** Crown  
Copyright 2022

## Annex 1- Key Roles

<b>Key Role</b>	<b>Key Staff</b>	<b>Contract Details</b>
Director of Operations	REDACTED	REDACTED
Contract Manager	REDACTED	REDACTED
Assistant to the Director of Operations	REDACTED	REDACTED

Version 1.1

## **Schedule 30 (Exit Management)**

Mid-Tier Contract –

## 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or

<b>"Transferring Assets"</b>	Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Virtual Library"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule;
	the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 2.2 of this Schedule.

## **2. SUPPLIER MUST ALWAYS BE PREPARED FOR CONTRACT EXIT**

2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall within 30 days from the Start Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:

2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.

2.3 Where Schedule 7 (Staff Transfer) applies to this Contract, the Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).

2.4 The Supplier shall:

2.4.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and



[Subject to Contract]

**Schedule 30 (Exit Management)** Crown

Copyright 2022

2.4.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

2.5 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### **3. ASSISTING RE-COMPETITION FOR DELIVERABLES**

3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").

3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).

3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### **4. EXIT PLAN**

4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph **Error! Reference source not found.** of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

4.3.1 how the Exit Information is obtained;

4.3.2 a mechanism for dealing with partial termination on the assumption that the

- Supplier will continue to provide the remaining Deliverables under this Contract;
- 4.3.3 the management structure to be employed during the Termination Assistance Period;
  - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
  - 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
  - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
  - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
  
  - 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (*Charges*). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be

[Subject to Contract]

**Schedule 30 (Exit Management) Crown**

Copyright 2022

strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.

**4.5 The Supplier shall:**

- 4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
  - a) every six (6) months throughout the Contract Period;
  - b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
  - c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
  - d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
- 4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.7 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

**5. TERMINATION ASSISTANCE**

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
  - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
  - 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.

[Subject to Contract]

**Schedule 30 (Exit Management) Crown**

Copyright 2022

5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **6. TERMINATION ASSISTANCE PERIOD**

6.1 Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
- 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.

6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7. OBLIGATIONS WHEN THE CONTRACT IS TERMINATED**

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

[Subject to Contract]

**Schedule 30 (Exit Management)** Crown

Copyright 2022

- 7.2.1 cease to use the Government Data;
- 7.2.2 vacate any Buyer Premises;
- 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
- 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
  - a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
  - b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.
- 7.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
  - 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
  - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
  - 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

[Subject to Contract]

**Schedule 30 (Exit Management)** Crown

Copyright 2022

- 8.2.2 which, if any, of:
- a) the Exclusive Assets that are not Transferable Assets; and
  - b) the Non-Exclusive Assets,
- the Buyer and/or the Replacement Supplier requires the continued use of; and
- 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

[Subject to Contract]

**Schedule 30 (Exit Management) Crown**

Copyright 2022

8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

**9. NO CHARGES**

9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

**10. DIVIDING THE BILLS**

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

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

**1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:**

- 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;**
- 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;**
- 1.1.3 providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;**
- 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;**
- 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;**
- 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;**
- 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;**



- 1.1.8 **providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;**
- 1.1.9 **answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;**
- 1.1.10 **agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;**
- 1.1.11 **providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:**
  - a) **to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and**
  - b) **following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;**
- 1.1.12 **knowledge transfer services, including:**
  - a) **making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);**
  - b) **transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;**
  - c) **providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required**

- for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
  - e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions, and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

## **1.2 The Supplier will:**

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

**1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.**

**1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:**

- 1.4.1 copies of up-to-date procedures and operations manuals;

- 1.4.2 **product information;**
- 1.4.3 **agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and**
- 1.4.4 **key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,**

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

**1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:**

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

[Subject to Contract]

**Schedule 31 (Buyer Specific Terms)**

Crown Copyright 2022

## Contents

1. Definitions .....	125
2. Capital Assets .....	125
3. Invoicing .....	125
4. Property and Premises .....	126
5. Publicity and Branding .....	126
6. Project Outputs .....	127
7. Safeguarding Children and Vulnerable Adults .....	128

[Subject to Contract]

## Schedule 31 (Buyer Specific Terms)

Crown Copyright 2022

# Schedule 31 (Buyer Specific Terms)

## 1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

Issued Property	means all items of property belonging to the Buyer issued to the Supplier for the purposes of the provision of the Deliverables
-----------------	---

## 2. Capital Assets

NOT USED

## 3. Invoicing

- 3.1. Invoices shall be submitted electronically by e-mail to be submitted electronically by e-mail to:

DfE Core/STA/TR A - [AccountsPayable.OCR@education.gov.uk](mailto:AccountsPayable.OCR@education.gov.uk) within

30 days of the end of the relevant invoicing date.

- 3.2. To request a statement, please email [accountspayable.BC@education.gov.uk](mailto:accountspayable.BC@education.gov.uk).

- 3.3. An invoice is only valid if it is legible and includes:

3.3.1. the date of the invoice

3.3.2. Supplier's full name and address

[Subject to Contract]

### Schedule 31 (Buyer Specific Terms)

Crown Copyright 2022

3.3.3. Contract reference number including the PO prefix

CORE CORE-PO-

3.3.4. the charging period

3.3.5. a detailed line level breakdown of the appropriate Charges including Deliverables provided or Milestones Achieved (if applicable)

3.3.6. days and times worked (if applicable)

3.3.7. Service Credits (if applicable); and

3.3.8. VAT (if applicable)

3.4. Invoices without a valid purchase order are now rejected by the Buyers e-invoicing solution. The Buyer no longer accepts paper invoices.

## 4. Property and Premises

Issued Property

NOT USED

Use of Premises

NOT USED

Facilities Provided

NOT USED

## 5. Publicity and Branding

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

### Schedule 31 (Buyer Specific Terms)

Crown Copyright 2022

- 5.2. The Buyer may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Deliverables or comprised in any work relating to the Deliverables.

## 6. Project Outputs

- 6.1. Unless otherwise agreed between the Parties, the Deliverables shall be published by the Buyer on its research website. The Buyer shall not use the Supplier's name in any advertising or public communications unless agreed in writing in advance with the Supplier (such agreement not to be unreasonably withheld or delayed).
- 6.2. The Supplier shall ensure that all outputs for publication by the Buyer adhere to the Buyer's style guide and MS Word template, available to download from: <https://www.gov.uk/government/publications/eoi-guide>.
- 6.3. Unless otherwise agreed between the Parties, the Supplier shall supply the Buyer with a draft for comment at least eight weeks before the intended publication date, for interim reports, and eight weeks before the expiry date of the Contract for final reports.
- 6.4. The Supplier shall consider revisions to the drafts with the Buyer in the light of any comments pursuant to clause 6.3. The Supplier shall provide final, signed off interim reports and other outputs planned within the lifetime of the Contract to the Buyer by no later than four weeks before the intended publication date, and final, signed off Deliverables by no later than the contracted expiry date of the Contract.
- 6.5. Until the date of publication, findings from all Contract shall be treated as confidential. The Supplier shall not release findings to the press or disseminate them in any way or at any time prior to publication without approval of the Buyer.
- 6.6. Where the Supplier wishes to issue a press notice or other publicity material containing findings from the Contract it may only do so with the prior written agreement of the Buyer and notification of plans, including timing and drafts of planned releases, shall be submitted by

### Schedule 31 (Buyer Specific Terms)

Crown Copyright 2022

the Supplier to the Buyer at least three weeks before the intended date of release and before any agreement is made with press or other external audiences, to allow the Buyer time to review. All press notices released by the Parties shall state the full title of the research report, and include a hyperlink to the Buyer's research web pages, and any other web pages as relevant, to access the publication/s. This clause applies at all times prior to publication of the final report.

- 6.7. Where the Supplier wishes to present findings from the Contract in the public domain, for example at conferences, seminars, or in journal articles, it may only do so with the prior written agreement of the Buyer and the Supplier shall notify the Buyer before any agreement is made with external audiences, to allow the Buyer time to consider the request. The Supplier shall only present findings that are already be in the public domain at the time of presentation, unless otherwise agreed with the Buyer. This clause applies at all times prior to publication of the final report.

## 7. Safeguarding Children and Vulnerable Adults

Regulated Activity

- (a) in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and
- (b) in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

- 7.1. The Parties acknowledge that the Supplier is carrying out a Regulated Activity with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 7.2. The Supplier shall put in place safeguards to protect children and/or vulnerable adults from any risk of significant harm which could arise from the performance of this Contract. The Supplier shall agree these safeguards with the Buyer before commencing work on the Contract.



**Schedule 31 (Buyer Specific Terms)**

Crown Copyright 2022

- 7.3. In addition, the Supplier shall carry out checks with the Disclosure and Barring Service (DBS checks) on all Supplier Staff carrying out Regulated Activity. The Supplier must carry out a DBS check for each relevant member of Supplier Staff and shall renew the DBS check every three years for as long as this Contract is in force. The DBS check must be completed before any of the Supplier Staff work with children and/or vulnerable adults, as applicable, in Regulated Activity.
- 7.4. The Supplier shall monitor the level and validity of the checks under this Clause for each member of the Supplier Staff.
- 7.5. The Supplier shall immediately notify the Buyer of any information that it reasonably requests to enable it to be satisfied that the obligations of the Supplier under this Clause have been met.
- 7.6. The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that such person would not be suitable to carry out, Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 7.7. The Supplier shall refer information about any person carrying out the Deliverables to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
- 7.8. The Supplier represents, warrants and undertakes that at all times for the purposes of this Contract it has no reason to believe that any member of the Supplier Staff is barred from performance of the Services in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 7.9. Both Parties will comply with all applicable requirements of Data Protection Legislation in relation to the requirements of this Clause. The Parties acknowledge that, for the purposes of the Data Protection Legislation, the Supplier is the Controller in respect of DBS Checks carried out on Supplier Staff. The Supplier will ensure that it has all necessary appropriate consents and notices in place to obtain the DBS Checks and to enable lawful disclosure of the DBS certificates and any other relevant Personal Data to the Supplier for the duration and purposes of this Contract.

[Subject to Contract]

**Schedule 31 (Buyer Specific Terms)**

Crown Copyright 2022

[Subject to Contract]

## **Schedule 32 (Background Checks)**

Crown Copyright 2022

# **Schedule 32 (Background Checks)**

## **1. WHEN YOU SHOULD USE THIS SCHEDULE**

This Schedule should be used where Supplier Staff must be vetted before working on Contract.

## **2. DEFINITIONS**

“**Relevant Conviction**” means any conviction listed in Annex 1 to this Schedule.

## **3. RELEVANT CONVICTIONS**

3.1 The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.2 Notwithstanding Paragraph 3.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

3.2.1 carry out a check with the records held by the Department for Education (DfE);

3.2.2 conduct thorough questioning regarding any Relevant Convictions; and

3.2.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

Mid-Tier Contract – Version 1.1

130 [Subject to Contract]

**Schedule 32 (Background Checks)**

Crown Copyright 2022

## **Annex 1 – Relevant Convictions**

**N/A**

# **Schedule 36 (Intellectual Property Rights)**

## **10. Intellectual Property Rights**

10.1. Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.

10.2. Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

### **10.3. Licences granted by the Supplier: Supplier Existing IPR**

10.3.1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 10.3.2.

10.3.2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:

10.3.2.1. or any End User to use and receive the Deliverables; or

10.3.2.2. to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### **10.4. Licences granted by the Buyer and New IPR**

10.4.1. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.

10.4.2. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

[Subject to Contract]

**Schedule 36 (Intellectual Property Rights) Crown**

Copyright 2022

10.4.3. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.

**10.5. Open Licence Publication**

10.5.1. Subject to Paragraph 10.5.4, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.

10.5.2. Subject to Paragraph 10.5.4, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.

10.5.3. The Supplier will supply any or all New IPR Items in a format suitable for publication under Open Licence (“the Open Licence Publication Material”) within 30 days of written request from the Buyer (“Buyer Open Licence Request”).

10.5.4. The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph 10.5.3 request in writing that the Buyer excludes all or part of:

10.5.4.1. the New IPR; or

10.5.4.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 10.5.3

from Open Licence publication.

10.5.5. Any decision to Approve any such request from the Supplier pursuant to Paragraph 10.5.4 shall be at the Buyer’s sole discretion, not to be unreasonably withheld, delayed or conditioned.

10.5.6. Subject to Clause 15 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

**10.6. Third Party IPR**

10.6.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 10.6.3. If the Supplier cannot obtain for the

[Subject to Contract]

**Schedule 36 (Intellectual Property Rights) Crown**

Copyright 2022

Buyer a licence on the terms set out in Paragraph 10.6.3 in respect of any Third Party IPR the Supplier shall:

10.6.1.1. notify the Buyer in writing; and

10.6.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

10.6.2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

10.6.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.

**10.7. Termination of licences**

10.7.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 10.3 and the Third Party IPR Licence granted pursuant to Paragraph 10.6 shall survive the Expiry Date and termination of this Contract.

10.7.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

10.7.3. Any licence granted to the Supplier pursuant to Paragraph 10.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:

10.7.3.1. immediately cease all use of the Buyer Existing IPR



(including the Buyer Data within which the Buyer Existing IPR may subsist);

10.7.3.2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and

10.7.3.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

[Subject to Contract]

**Schedule 36 (Intellectual Property Rights)** Crown

Copyright 2022

## **11. Existing IPR**

2.1 The following products are recognised as existing IPR and belong to The Share Foundation :-

The Stepladder Programme

Managing My Money Programme

[Subject to Contract]

## Schedule 37 (Corporate Resolution Planning)

Crown copyright 2022

# Schedule 37 (Corporate Resolution Planning)

**THIS SCHEDULE SHALL ONLY BE USED SUBJECT TO THE SUCCESSFUL BIDDER BEING A PUBLIC SECTOR DEPENDANT ORGANISATION**

## 11. DEFINITIONS

11.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

- "Accounting Reference Date"** means in each year the date to which the Supplier prepares its annual audited financial statements;
- "Annual Revenue"** means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:
- (m) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
  - (n) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
- "Assurance"** means written confirmation from a Relevant Buyer to the Supplier that the CRP Information is approved by the Relevant Buyer;
- "Cabinet Office Markets and Suppliers Team"** means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
- "Corporate Change Event"** means:

[Subject to Contract]

### **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

- (o) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (p) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (q) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (r) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (s) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (t) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (u) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (v) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay

**Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;

- (w) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (x) any process or events with an effect analogous to those in Paragraphs (s) to (u) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

**"Corporate Change Event Grace Period"**

means a grace period agreed to by the Relevant Buyer for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event

**"Corporate Resolvability Assessment (Structural Review)"**

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 13 and **Error! Reference source not found.**2 of this Schedule11;

**"Critical National Infrastructure"**

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if

[Subject to Contract]

## Schedule 37 (Corporate Resolution Planning)

Crown copyright 2022

compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or

(b) significant impact on the national security, national defence, or the functioning of the UK;

<b>"Critical Service Contract"</b>	means the overall status of the Services provided under this Contract as determined by the Buyer and specified in Paragraph 12 of this Schedule;
<b>"CRP Information"</b>	means the corporate resolution planning information, together, the:  (a) Exposure Information (Contracts List);  (b) Corporate Resolvability Assessment (Structural Review); and  (c) Financial Information and Commentary
<b>"Exposure Information (Contracts List)"</b>	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 13 and Annex 1 of this Schedule;
<b>"Financial Information and Commentary"</b>	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 13 and Annex 3 of this Schedule;
<b>"Public Sector Dependant Supplier"</b>	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
<b>"Relevant Buyer" or "Relevant Buyers"</b>	means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
<b>"Strategic Suppliers"</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;

[Subject to Contract]

## Schedule 37 (Corporate Resolution Planning)

Crown copyright 2022

<b>"UK Public Sector Business"</b>	means any goods, service or works provision to UK public sector bodies, including Central Government Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
<b>"Valid"</b>	in respect of an Assurance, has the meaning given to it in Paragraph 13.7 of this Schedule;

## CORPORATE RESOLUTION PLANNING

### 12. SERVICE STATUS AND SUPPLIER STATUS

12.1 This Contract **is not** a Critical Service Contract.

12.2 The Supplier shall notify the Buyer and the Cabinet Office Markets and Suppliers Team, in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier. The contact email address for the Markets and Suppliers Team is [resolution.planning@cabinetoffice.gov.uk](mailto:resolution.planning@cabinetoffice.gov.uk).

### 13. PROVISION OF CORPORATE RESOLUTION PLANNING (CRP) INFORMATION

13.1 Paragraphs 13 to 15 shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 12.1 of this Schedule or the Supplier is or becomes a Public Sector Dependent Supplier.

13.2 Subject to Paragraphs 13.6, 13.10 and 13.11 of this Schedule:

- (a) where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Buyer or Relevant Buyers with the CRP Information within 60 days of the Effective Date; and
- (b) except where it has already been provided in accordance with Paragraph 13.2(a) where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Buyer or Relevant Buyers with the CRP Information within 60 days of the date of the Relevant Buyer's or Relevant Buyers' request.

13.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 13.2, 13.8 and 13.9 of this Schedule:

- (a) is full, comprehensive, accurate and up to date; (b)
- is split into three parts:

[Subject to Contract]

### **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

- (i) Exposure Information (Contracts List)
- (ii) Corporate Resolvability Assessment (Structural Review);
- (iii) Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out in the latest published version of the Resolution Planning Guidance Note published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancyplaybooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Buyers to understand and consider the information for approval;
- (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
- (e) complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)), Annex 2 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.

13.4 Following receipt by the Relevant Buyer or Relevant Buyers of the CRP Information pursuant to Paragraphs 13.2, 13.8 and 13.9 of this Schedule, the Buyer shall procure that the Relevant Buyer or Relevant Buyers discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier and either provide an Assurance to the Supplier that Relevant Buyer or Relevant Buyers approve the CRP Information or that Relevant Buyer or Relevant Buyers reject the CRP Information.

13.5 If the Relevant Buyer or Relevant Buyers reject the CRP Information:

- (a) the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Buyers' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Buyers for approval within 30 days of the date of the Relevant Buyer's or Relevant Buyers' rejection. The provisions of Paragraphs 13.3 to 13.5 of this Schedule shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.



[Subject to Contract]

### **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

- 13.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Central Government Body or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Central Government Body and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 13.2 if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Buyers on or before the date on which the CRP Information would otherwise have been required.
- 13.7 An Assurance shall be deemed Valid for the purposes of Paragraph 13.6 of this Schedule if:
- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
  - (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.
- 13.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 3.8(c) of this Schedule its initial CRP Information) to the Relevant Buyer or Relevant Buyers:
- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 13.11 of this Schedule) unless the Supplier is relieved of the consequences of the Financial Distress Event (Schedule 24 *Financial Difficulties*)
  - (b) within 30 days of a Corporate Change Event unless:
    - (i) the Supplier requests and the Relevant Buyer (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Buyer (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Buyer to enable it to understand the nature of the Corporate Change Event and the Relevant Buyer shall

[Subject to Contract]

### Schedule 37 (Corporate Resolution Planning)

Crown copyright 2022

reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or

- (ii) not required pursuant to Paragraph 13.10;
- (c) within 30 days of the date that:
  - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 13.10; or
  - (ii) none of the credit rating agencies specified at Paragraph 13.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Buyer (whichever is the earlier), unless:
  - (i) updated CRP Information has been provided under any of Paragraphs 3.8(a), 3.8(b) or 3.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 3.8(d); or
  - (ii) not required pursuant to Paragraph 13.10.

13.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 3.8(a) to 3.8(d) of this Schedule, the Supplier shall provide at the request of the Relevant Buyer or Relevant Buyers and within the applicable timescales for each event as set out in Paragraph 13.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Relevant Buyer or Relevant Buyers.

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

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

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph **Error! Reference source not found.** of Schedule 24 (*Financial Difficulties*)) (as defined in Schedule 24 *Financial Difficulties*) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 13.10, in

[Subject to Contract]

## **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 13.8.

- 13.11 Subject to Paragraph 15, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Buyers that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Buyers, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Buyer or Relevant Buyers to the extent required under Paragraph 13.8.

## **14. TERMINATION RIGHTS**

- 14.1 The Buyer shall be entitled to terminate this Contract under Clause 14.4 (*Ending the Contract*) if the Supplier is required to provide CRP Information under Paragraph 13 of this Schedule and either:
- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Buyer's or Relevant Buyers' request; or
  - (b) the Supplier fails to obtain an Assurance from the Relevant Buyer or Relevant Buyers within 4 months of the date that it was first required to provide the CRP Information under this Contract.

## **15. CONFIDENTIALITY AND USAGE OF CRP INFORMATION**

- 15.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of Critical National Infrastructure and to enable contingency planning to maintain service continuity for end users and protect Critical National Infrastructure in such eventuality.
- 15.2 Where the Relevant Buyer is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage Contract with the Supplier containing terms no less stringent than those placed on the Buyer under Paragraph 15.1 of this Schedule and Clause 19 (*What you must keep Confidential*).
- 15.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Buyers pursuant to Paragraph 13 of this Schedule subject, where necessary, to the Relevant Buyer or Relevant Buyers entering into an appropriate confidentiality Contract in the form required by the third party.

[Subject to Contract]

### **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

15.4 Where the Supplier is unable to procure consent pursuant to Paragraph 15.3, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
- (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
  - (i) summarising the information;
  - (ii) grouping the information;
  - (iii) anonymising the information; and
  - (iv) presenting the information in general terms

15.5 The Supplier shall provide the Relevant Buyer or Relevant Buyers with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

[Subject to Contract]

## **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

### **ANNEX 1: EXPOSURE: CRITICAL CONTRACTS LIST**

- 1 The Supplier shall:
  - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
    - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local Buyers, health bodies, police fire and rescue, education bodies and the devolved administrations;
    - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the Contract with the end recipient; or
    - (c) involve or could reasonably be considered to involve Critical National Infrastructure;
  - 1.2 provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link

[Subject to Contract]

**Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

**ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)**

- 11 The Supplier shall:
  - 11.1 provide sufficient information to allow the Relevant Buyer to understand the implications on the Supplier Group's UK Public Sector Business and Critical National Infrastructure agreements listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
  - 11.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
  - 11.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and Critical National Infrastructure agreements listed pursuant to Annex 1 and the dependencies between each.

[Subject to Contract]

## **Schedule 37 (Corporate Resolution Planning)**

Crown copyright 2022

### **ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY**

- 12 The Supplier shall:
- 12.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Buyer to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
  - 12.2 ensure that the information is presented in a simple, effective and easily understood manner.
  - 12.3 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule. If such accounts are not available in that timeframe, to the extent permitted by Law financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Relevant Buyer remains protected by confidentiality).