



# Home Office

King's Arms Project (Bedford)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attn: [REDACTED]

By email to: [REDACTED]

Date: 16<sup>th</sup> June 2020

**Ref: Contract Signature - Community Engagement Pilot 2 Service Contract**  
**OJEU Ref Number: 2019/S 194-471660**

Dear [REDACTED],

**Award of contract for the supply of Community Engagement Pilot 2**

Following your tender/proposal for the supply of support services to migrant groups to the Secretary of State for the Home Department, acting through Immigration Enforcement, as part of the Home Office ("the Authority"), we are pleased to award this contract to you.

This letter (Award Letter) and its [Annex/Annexes], and Schedules set out the terms of the contract between the Authority and King's Arms Project ("the Supplier"), as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the "**Conditions**"). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter, as they will not be accepted by the Authority and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

- 1) The Services shall be performed at [REDACTED]
- 2) The charges for the Services shall be as set out in [Annex 2 - the Supplier's quotation dated 11/11/2019].
- 3) The specification of the Services to be supplied is as set out in [Schedule 2.1 Service Description and Schedule 4.1 (Supplier Solution)].
- 4) The Term shall commence on the Contract Signature Date 16<sup>th</sup> June 2020 and the Expiry Date shall be 15<sup>th</sup> June 2022.
- 5) The address for notices of the Parties are:

**Authority**

**Supplier**

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

Email:

[REDACTED]

Email: [REDACTED]

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- 6) For the purposes of the Agreement the Staff Vetting Procedures/data security requirements/equality and diversity policy and environmental policy are to be provided at the request of the supplier.
- 7) The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

**Payment**

All invoices must be sent, quoting a valid purchase order number (PO Number), to: [REDACTED] and can be in the following formats; pdf, tiff, jpeg or png, (Excel is not supported.) Alternatively, hard copy invoices may be posted to;

[REDACTED]

Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment, please contact our Accounts Payable section either by email to [REDACTED] or by telephone [REDACTED] between 09:00-17:00 Monday to Friday.

**Liaison**

For general liaison your contact will continue to be [REDACTED] or, in their absence, [REDACTED]

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to via the e-sourcing portal or electronically **within [7]** days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Name: [REDACTED]

Job Title: Associate Commercial Specialist Signature:

[REDACTED]

Date: 16/06/2020

We accept the terms set out in this letter and its Annexes and Schedules, including the Conditions.

Name: [REDACTED]

Job Title: CEO

Signed for and on behalf of King’s Arms Project

Signature: Date: 16/06/2020

[REDACTED]

**Annex 1 Terms and Conditions of Contract for Services**

**1 Interpretation**

1.1 In these terms and conditions:

- “Agreement”** means the contract between (i) the Authority acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter, Annexes;
- “Authority”** means the person named as Authority in the Award Letter;
- “Award Letter”** means the letter from the Authority to the Supplier printed above these terms and conditions;

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**“Central Government Body”**

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

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

**“Charges”**

means the charges for the Services as specified in the Award Letter;

**“Contract Signature Date”**

means the date on which the Agreement is signed by both parties and the contract term commences;

**“Confidential Information”**

means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;

**“Controller”**

has the meaning given in the GDPR;

**“Data**

**Loss** means any event that results, or may result, in unauthorised access to

**Event”** Personal Data held by the Supplier under this Agreement, and /or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**“DPA”**

means the Data Protection Act 2018;

**“Data**

means an assessment by the Controller of the impact of the envisaged

**Protection Assessment”** processing on the protection of Personal Data; **Impact**

**“Data Protection Legislation”**

means:

- (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;

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(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and

(c) all applicable Law about the processing of personal data and privacy;

has the meaning given in the GDPR;

**“Data Protection Officer”**

**“EIRs”**

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

**“Exit Day”**

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

**“Expiry Date”**

means the date for expiry of the Agreement as set out in the Award Letter;

**“FOIA”**

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act; means the General Data Protection Regulation (EU) 2016/679;

**“the GDPR”**

**“Information”**

has the meaning given under section 84 of the FOIA;

**“Key**

**Personnel”**

means any persons specified as such in the Award Letter or in Schedule 9.2 (Key Personnel) or otherwise notified as such by the Authority to the Supplier in writing;

**“LED”**

Law Enforcement Directive (*Directive (EU) 2016/680*);

**“Party”**

means the Supplier or the Authority (as appropriate) and “Parties” shall mean both of them;

**“Personal Data”**

Has the meaning given in GDPR;

**“Personal Data Breach”**

Has the meaning given in the GDPR;

**“Processor”**

Has the meaning given in GDPR;

**“Prohibited Act”**

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance

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of a relevant function or activity in connection with this Agreement; (c)

an offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud the Authority;  
or

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**“Protective Measures”** Pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**“Purchase Order Number”** means the Authority’s unique number relating to the supply of the Services;

**“Request for Information”** has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

**“Services”** means the services to be supplied by the Supplier to the Authority under the Agreement;

**“Service Commencement Date”** means the date on which the service commences;

**“Specification”** means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;

**“Staff”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

**“Staff Vetting Procedures”** means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Supplier from time to time;

**“Supplier”** means the person named as Supplier in the Award Letter;

**“Term”** means the period from the Contract Signature Date of the Agreement as set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

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### 1.2 Schedules to accompany the terms and conditions;

- 2.1 Service Description
- 2.2 Performance
- 2.5 Insurance
- 2.6 Social Values
- 4.1 Supplier Solution
- 4.2 Commercially Sensitive Information
- 4.3 Notified Key Sub-Contractors
- 6.1 Implementation Plan
- 7.4 Financial Distress
- 8.1 Governance
- 8.4 Reports and Records Provision
- 9.2 Key Personnel

### 1.3 In these terms and conditions, unless the context otherwise requires the following interpretation shall apply:

- 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 Central Government 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 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
  - (a) 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 Exit 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
  - (b) any EU institution or EU Home Office or other such EU body shall be read on and after Exit Day as a reference to the UK institution, Home Office or body to which its functions were transferred;
- 1.3.6 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”;
- 1.3.7 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;

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1.3.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

1.3.9 references to numbered clauses or paragraphs are references to the relevant clause or paragraph in these terms and conditions;

1.3.10 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.3.11 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement; and

1.3.12 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

## **2 Basis of Agreement**

2.1 The Award Letter constitutes an offer by the Authority to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.

2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Authority of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.

## **3 Supply of Services**

3.1 In consideration of the Authority's agreement to pay the Charges, the Supplier shall supply the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Agreement.

3.2 In supplying the Services, the Supplier shall:

3.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;

3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;

3.2.3 use Staff/Key Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;

3.2.5 comply with all applicable laws; and

3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

3.3 The Authority may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Supplier.

## **4 Term**

4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

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4.2 The Authority may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

### 5 Charges, Payment and Recovery of Sums Due

5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

5.3 The Supplier shall invoice the Authority as specified in the Agreement. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

5.4 In consideration of the supply of the Services by the Supplier, the Authority shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

5.5 If the Authority fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.

5.6 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.

5.7 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:

5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and

5.8.2 a provision requiring the counterparty to that sub-contract to include in any subcontract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement;

5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

## 6 Premises and equipment

- 6.1 If necessary, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Supplier or the Staff/Key Personnel shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Authority's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Supplier or any Staff/Key Personnel, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Supplier shall, and shall procure that all Staff/Key Personnel shall, comply with all the Authority's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Agreement shall remain the property of the Authority and shall be used by the Supplier and the Staff/Key Personnel only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff/Key Personnel. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Supplier or relevant Staff/Key Personnel unless the Authority is notified otherwise in writing within 5 Working Days.

## 7 Staff and Key Personnel

- 7.1 If the Authority reasonably believes that any of the Staff/Key Personnel are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to the Authority's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff/Key Personnel are vetted in accordance with the Staff Vetting Procedures;

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7.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with the Agreement; and

7.2.3 procure that all Staff/Key Personnel comply with any rules, regulations and requirements reasonably specified by the Authority.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

### **8 Assignment and sub-contracting**

8.1 The Supplier shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.2 Where the Authority has consented to the placing of sub-contracts, the Supplier shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.

8.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

### **9 Intellectual Property Rights**

9.1 All intellectual property rights in any materials provided by the Authority to the Supplier for the purposes of this Agreement shall remain the property of the Authority but the Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

9.3 The Supplier hereby grants the Authority:

9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sublicense) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sublicense) to use:

- (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

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- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.4 The Supplier shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff/Key Personnel.

**10 Governance and Records**

10.1 The Supplier shall:

- 10.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Agreement. **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause 11.2, each Party shall:

- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisers;
- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Supplier, to the Staff/Key Personnel on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff/Key Personnel to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 11.2.6 where the receiving Party is the Authority:

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- (a) on a confidential basis to the employees, agents, consultants, contractors and sub-contractors of the Authority;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Supplier shall not and shall take reasonable steps to ensure that the Staff/Key Personnel shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.

**12 Freedom of Information and the Environmental Information Regulations**

12.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall:

- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIRs;
- 12.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

12.2 The Supplier acknowledges that the Authority may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA or EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

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### 13 Protection of Personal Data and Security of Data

13.1 The Supplier shall procure that all its Staff/Key Personnel shall, comply with any notification requirements under Data Protection Legislation and both Parties shall duly observe all their obligations as set out in Annex 5.

### 14 Liability

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18, in no event shall the Supplier be liable to the Authority for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff/Key Personnel;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff/Key Personnel; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clauses 9.4 and 18 shall be unlimited.

### 15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

### 16 Termination

16.1 The Authority may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

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16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.3 The Supplier shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.

16.4 The Supplier may terminate the Agreement by written notice to the Authority if the Authority has not paid any undisputed amounts within 90 days of them falling due.

16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement:

16.6.1 the Supplier shall give all reasonable assistance to the Authority and any incoming supplier of the Services; and

16.6.2 the Supplier shall return all requested documents, information and data to the Authority as soon as reasonably practicable.

16.6.3 the Authority:

(a) shall pay all outstanding and undisputed amounts due under the Clause 5 of the Agreement; and

(b) may pay such other amounts as it considers reasonable if the Agreement is terminated.

## 17 Compliance

17.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

17.2 The Supplier shall:

17.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and

17.2.2 notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

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17.3 The Supplier shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Supplier from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff/Key Personnel.

17.4 The Supplier shall supply the Services in accordance with the Authority's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier shall comply with, and shall ensure that its Staff/Key Personnel shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

**18 Prevention of Fraud and Bribery**

18.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its Staff or Key Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

18.2 The Supplier shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority employees, consultants, contractors, sub-contractors or agents to contravene or otherwise incur any liability in relation to all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010 ("the Relevant Requirements") .

18.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 1.3(a) and make such records available to the Customer on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

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18.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of this clause, or has reason to believe that it has or any of its Staff or Key Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

18.5 If the Supplier makes a notification to the Authority pursuant to Clause 18.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in the Suppliers possession.

18.6 If the Supplier is in Default of this clause, the Authority may by notice:

- (a) require the Supplier to remove from performance of this Agreement any of its Staff or Key Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this Agreement.

18.7 Any notice served by the Authority under Clause 18.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## 19 Dispute Resolution

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 20 General

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

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- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and noncontractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

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**Annex 2 Charges**

[REDACTED]

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**Annex 3 Specification**

**[NOT USED] refer to SCHEDULE 4.1 (SUPPLIER SOLUTION)**

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**Annex 4 Data Protection**

[REDACTED]

## Annex 5 Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (Joint Controller Agreement) in replacement of Clause 23.2-23-15 (Where one Party is Controller and the other Party is Processor) and 23.17-23.27 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the Supplier/Authority:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Supplier's/Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

### 2. Undertakings of both Parties

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

- (a) report to the other Party every six months on:
  - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

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- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; that it has received in relation to the subject matter of the Agreement during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and
  - (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
  - (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
  - (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
  - (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data.
  - (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
    - (i) are aware of and comply with their duties under this Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information;
    - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
    - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
  - (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (i) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and

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(iv) cost of implementing any measures.

- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

**3. Data Protection Breach**

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

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

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

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

#### 4. Audit

4.1 The Supplier shall permit:

- (a) the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation.
- (b) the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

#### 5. Impact Assessments

5.1 The Parties shall:

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

#### 6. ICO Guidance

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

#### 7. Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- a) If in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- b) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Contractor's sole cost, full cooperation and access to conduct a thorough audit of such data incident;

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- c) If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*).

7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“**Court**”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim Losses**”):

- a) if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;
- b) if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and
- c) if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

9.4 Nothing in Paragraphs 9.2-9.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

## 8. Termination

If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Control Agreement*), the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 16 (*Termination Rights*).

## 9. Sub-Processing

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

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

## 10. Data Retention

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

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compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

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**Annex 5b (Processing Personal Data)**

[REDACTED]