



Department  
for Work &  
Pensions

**MODEL SERVICES AGREEMENT**

**DATED**

**14 DECEMBER 2020**

**(1) THE SECRETARY OF STATE FOR WORK AND PENSIONS  
[*THE AUTHORITY*]**

**and**

**(2) SERCO LTD [*THE SUPPLIER*]**

**AGREEMENT**

**relating to**

**Job Finding Support**



Government Legal Department

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**THIS AGREEMENT** is made on

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**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** (the “**Authority**”); and
- (2) **Serco Ltd** a company registered in [England and Wales] under company number [03970268] whose registered office is at [Serco House 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY] (the “**Supplier**”)

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

**INTRODUCTION**

- (A) **The Authority launched an open commercial process to deliver Job Finding Support on 18<sup>th</sup> September 2020. Job Finding Support is a new digitally delivered voluntary provision covering England, Scotland and Wales to support recently unemployed people who may benefit from a short package of tailored support to help them become familiar with current recruitment practices and understand sector specific approaches.**
- (B) **On 3<sup>rd</sup> September 2020 the Authority advertised in the Official Journal of the European Union (reference 2020/S 174-421567), inviting prospective suppliers to submit proposals for Job Finding Support.**
- (C) **The Supplier is a public services provider and has experience in employment related services.**
- (D) **On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.**
- (E) **Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.**

**IT IS AGREED** as follows:

## **SECTION A - PRELIMINARIES**

### **A1. Definitions and interpretation**

- A1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- A1.2 In this Agreement, unless the context otherwise requires:
  - (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- (e) any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
    - (i) 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
    - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
  - (f) 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”;
  - (g) 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;
  - (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
  - (i) unless otherwise provided and save for references and in Schedule 10 (Guarantee), references to Clauses and Schedules are references to the Clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts, Annexes and Appendices are, unless otherwise provided, references to the paragraphs, parts, annexes and appendices of the Schedule or the Part of the Schedule in which the references appear; and
  - (j) references to this Agreement are references to this Agreement as amended from time to time.
- A1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- A1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes and Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions);
  - (b) Schedules 2.1 (Services Description) and 2.2 (Performance Reviews) and their Annexes and Appendices;
  - (c) any other Schedules and their Annexes and Appendices (other than Schedule 4.1 (Supplier Solution) and its Annexes and Appendices, and Schedule 14 (DWP Supplier Code of Conduct));
  - (d) Schedule 4.1 (Supplier Solution) and its Annexes and Appendices (if any); and
  - (e) Schedule 14 (DWP Supplier Code of Conduct).

A1.5 The Schedules, and their Annexes and Appendices, form part of this Agreement.

A1.6 In entering into this Agreement the Authority is acting as part of the Crown.

## A2. Due diligence

A2.1 The Supplier acknowledges that:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
  - (i) the Authority Requirements;
  - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
  - (iii) the operating processes and procedures and the working methods of the Authority;
  - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
  - (v) the existing contracts (including any licences, support, maintenance and other agreements 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 Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
  - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (ii) the actions needed to remedy each such unsuitable aspect; and
  - (iii) 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 Agreement.

A2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

A2.3 Not Used.

## A3. Warranties

A3.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

A3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITB (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (k) the Financial Model is a true and accurate reflection of the Fees and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (n) within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

A3.3 The representations and warranties set out in Clause A3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

A3.4 Each of the representations and warranties set out in Clauses A3.1 and A3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

A3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause A3.1 or A3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

A3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

A3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## A4. Not Used

## A5. Supplier Code of Conduct



- A5.1 The Supplier shall at all times during the Term comply with the Supplier Code of Conduct.
- A5.2 Any breach by the Supplier of this Clause A5 shall entitle the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

## SECTION B – THE SERVICES

### B1. Term

B1.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses A1 (Definitions and Interpretation), A3 (Warranties), B1 (Term), F6 (Confidentiality), F7 (Transparency and Freedom of Information), F9 (Publicity and Branding), G1 (Limitations on Liability), J3 (Waiver and Cumulative Remedies), J4 (Relationship of the Parties), J6 (Severance), J8 (Entire Agreement), J9 (Third Party Rights), J10 (Notices), J11 (Disputes) and J12 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause I1 (Termination Rights), terminate on the last day of the Payment Tail Period.

B1.2 This Agreement shall continue for a period of 1 year from the Referral Period Start Date(Initial Term). The Authority shall have the option to extend the Agreement by up to 1 year by serving written notice upon the Supplier not later than 3 month prior to the end of the Initial Term.

### Condition Precedent

B1.2 Not Used

B1.3 Not Used

B1.4 Not Used

## B2. Services

### Standard of Services

B2.1 Not Used.

B2.2 The Supplier shall ensure that:

- (a) the Services:
  - (i) are supplied in accordance with Schedule 2.1 (Services Description); and
  - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and
  - (iii) are supplied in accordance with the Supplier Code of Conduct.

B2.3 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
  - (i) all applicable Law;
  - (ii) Good Industry Practice;
  - (iii) the Standards;
  - (iv) the Baseline Security Requirements;
  - (v) the Quality Plans;
  - (vi) Not used; and
  - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses B2.3(a)(i) to B2.3(a)(v); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

B2.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses B2.3(a)(i) to B2.3(a)(v), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

### Supplier covenants

B2.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this

## Agreement;

- (b) subject to Clause D3 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
  - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
  - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements of the Services and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Requirements)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;
  - (iii) 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;
  - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
  - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause B2.5(g);

- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any Change of Control taking place;
- (l) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement;
- (n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards;
- (o) comply and shall ensure that its Supplier Personnel comply with the provisions of Schedule 13 (Life Chances); and
- (p) to the extent required by the Authority, comply and shall ensure that its Supplier Personnel comply with the provisions of Schedule 16 (Welsh Language Scheme) in providing the Services in the Welsh language.

B2.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

B2.7 Without prejudice to Clauses F4.2 and F4.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses B2.5(b) to B2.5(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause B2.5(a) and Clauses B2.5(e) to B2.5(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work.

### Specially written software warranty

B2.8 Without prejudice to Clauses B2.5 (Supplier Covenants) and B2.7 (Services) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

### Continuing obligation to provide the Services

B2.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

- (a) Not Used;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Fees,

unless the Supplier is entitled to terminate this Agreement under Clause I1.3(a) (Termination by the Supplier) for failure to pay undisputed Fee

### Power of attorney

B2.10 By way of security for the performance of its obligations under Clauses B2.5(g) and B2.5(h) (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause B2.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

### Authority responsibilities

B2.11 Not Used.

## B3. Implementation

### Quality plans Not Used

### Implementation plan and delays

B3.1 The Supplier shall implement the Implementation Plan to the satisfaction of the Authority and satisfy the requirement of Clause C8.6 with effect from the Effective Date in accordance with the terms of the Implementation Plan and in accordance with the timescales set out in the Implementation Plan but in any event prior to the Referral Period Start Date, and if the Supplier fails to do so the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier.

B3.2 Not Used.

B3.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

- (a) it shall:
  - (i) notify the Authority of the Delay or anticipated Delay; and

- (ii) address the impact of the Delay or anticipated Delay; and
  - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
- (b) Not Used.

## B4. Customer Service Standards Indicators

- B4.1 The Supplier shall ensure that, at all times from the Effective Date, the Services are supplied in such a manner as to meet or exceed the Customer Service Standards (CSS) as calculated by the Authority and as set out in paragraph 1.13 of Schedule 2.1.
- B4.2 In measuring the Supplier's performance against each of the Customer Service Standards (CSS), the Authority shall have absolute discretion to choose any CSS Measurement Point and any CSS Measurement Period.
- B4.3 The Authority shall conduct regular formal Contract Performance Review meetings ("CPRs") in accordance with Schedule 2.2 to monitor, and review, the Supplier's performance against the Customer Service Standards (CSS).
- B4.4 The Supplier shall comply with the provisions of Schedule 2.2 in relation to the review, monitoring and reporting of its performance against the Customer Service Standards (CSS).
- B4.5 The Authority's measurement of the Supplier's performance against the Customer Service Standards (CSS) shall continue throughout the period from the Effective Date until the later of the Services Cessation Date or the end of the Payment Tail Period.
- B4.6 The Authority may, at its sole discretion, elect to make changes to the Customer Service Standards (CSS) from time to time. If the Authority elects to make changes to the Customer Service Standards (CSS) the Authority shall notify the Supplier in writing two (2) months prior to such changes becoming effective and shall confirm any Management Information requirements in respect of such changed Customer Service Standards (CSS).

## B5. Performance Improvement Process

- B5.1 Where the Authority believes that a Service Failure has occurred, the Authority may at any time (in its absolute discretion) elect to give a Performance Improvement Notice to the Supplier in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this Clause B5.
- B5.2 If the Authority initiates the Performance Improvement Process in accordance with this Clause B5:
  - (a) the Supplier acknowledges and agrees that the Authority has the right to invoice the Supplier for Performance Improvement Admin Fees;
  - (b) the Performance Improvement Admin Fees shall be payable by the Supplier within thirty (30) days of the date of the relevant invoice;
  - (c) the Supplier acknowledges and agrees that the Performance Improvement Admin Fees are a fair and conservative reflection of the additional costs incurred by the Authority in the initiation and management of the Performance Improvement Process;

- (d) the Authority shall not be prevented from charging Performance Improvement Admin Fees for subsequent instances in which it initiates the Performance Improvement Process;
- (e) any exercise by the Authority of its rights under this Clause B5.2 shall be without prejudice to any other rights that may arise pursuant to the terms of this Agreement.

B5.3 A Performance Improvement Notice given in accordance with this Clause B5 shall indicate:

- (a) that it is a Performance Improvement Notice;
- (b) the Service Failure;
- (c) whether the Supplier is required to pay Performance Improvement Admin Fees;
- (d) the actions the Authority in its absolute discretion requires the Supplier to take to satisfy the Authority that the Supplier can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure where it is capable of remedy; and
- (e) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice.

B5.4 For the avoidance of doubt, the Authority may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Authority's right to do so.

B5.5 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the Agreement pursuant to any other termination rights under the Agreement.

B5.6 Within such timescales as notified by the Authority to the Supplier (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Supplier shall either:

- (a) submit a draft Performance Improvement Plan; or
- (b) inform the Authority that it does not intend to submit a draft Performance Improvement Plan,

in the event that the Supplier either fails to submit a draft Performance Plan or the Supplier informs the Authority that it does not intend to submit a draft Performance Improvement Plan the Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier.

B5.7 The Authority shall either approve the draft Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of its receipt pursuant to Clause B5.6(a), or it shall inform the Supplier why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Supplier shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Authority within a period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of its receipt of the Authority's comments. If no such notice is



given, the Supplier's draft Performance Improvement Plan shall be deemed to be agreed.

- B5.8 The Authority and the Supplier may agree temporary variations to the Agreement in relation to the subject matter and nature of the Service Failure as part of the Performance Improvement Plan.
- B5.9 Once agreed the Supplier shall immediately implement the Performance Improvement Plan.
- B5.10 If, despite the measures taken under Clause B5.7 a revised Performance Improvement Plan cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of receipt by the Supplier of the Authority's comments in respect of the Supplier's draft Performance Improvement Plan then the Authority may elect to end the Performance Improvement Process and (a) refer the matter for resolution by the Dispute Resolution Procedure set out in Clause J11 (Disputes); or (b) to terminate the Agreement by issuing a Termination Notice to the Supplier.
- B5.11 If a Performance Improvement Plan is agreed between the Parties, but the Supplier fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Supplier fails to rectify the Service Failure and/or undertake all the actions specified by the Authority in the Performance Improvement Notice by the Performance Improvement End Date (a "**Performance Improvement Plan Failure**"), the Authority may, at its absolute discretion, but shall not be obliged to:
- (a) terminate the Agreement by issuing a Termination Notice to the Supplier; and/or
  - (b) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Supplier's commercial director (or equivalent) under the Dispute Resolution Procedure set out in Clause J11 (Disputes);

and for the avoidance of doubt, this Clause is without prejudice to any other rights which the Authority has under the Agreement.

- B5.12 Any subsequent Service Failure, which the Authority regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this Clause B5, which occurs not more than six (6) months after the Performance Improvement End Date, shall entitle the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

## B6. Services improvement

- B6.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause B6, and is required to collaborate with sub-contractors for this purpose. As part of this obligation the Supplier shall identify and report to the Authority once every six (6) months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with

other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;

- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

B6.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

B6.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

## B7. Equipment and maintenance

### Supplier equipment

B7.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise, on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

B7.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

B7.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement.

### Maintenance

B7.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the Supplier System (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

B7.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

B7.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the Supplier System 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 Supplier System and the Services.

### Supply of Goods

- B7.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:
- (a) the relevant Goods and their prices shall be as set out in *[insert description of catalogue or include list in Schedules]*;
  - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
  - (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
  - (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
  - (e) without prejudice to any other rights or remedies of the Authority:
    - (i) risk in the Goods shall pass to the Authority at the time of delivery; and
    - (ii) ownership of the Goods shall pass to the Authority at the time of payment.

## B8. No Guarantee of Levels, Values Or Exclusivity

- B8.1 Subject to Clause B8.2 and Clause B8.3, the Authority will refer prospective Participants to the Supplier during the Referral Period in accordance with the provisions of the Agreement (in particular, the Specification).
- B8.2 The Supplier acknowledges and has submitted its Final Offer on the understanding that no guarantee is given by the Authority in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Authority.
- B8.3 The Supplier acknowledges that, in entering the Agreement, no form of exclusivity has been granted by the Authority for Services from the Supplier and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

## B9. Participant complaints

- B9.1 The Supplier shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Supplier (and/or any of its Sub-contractors) or any aspect of the supply of the Services.
- B9.2 If the dispute between any Participant and the Supplier (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.
- B9.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Supplier shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Supplier for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Supplier or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Supplier or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Supplier (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date

of the ICE final investigation report.

- B9.4 Without prejudice to Clauses B9.1 to B9.3, the Authority shall take all reasonable steps to investigate any complaint it receives regarding:
- a) the standard of Services;
  - b) the manner in which any Services have been supplied,
  - c) the manner in which work has been performed;
  - d) the materials or procedures the Supplier uses; or
  - e) any other matter connected with the performance of the Supplier's obligations under the Agreement.
- B9.5 Without prejudice to its other rights and remedies under the Agreement, the Authority may, in its sole discretion, uphold any complaint and take further action in accordance with Clause B or Clause I of the Agreement.
- B9.6 The Supplier shall provide Management Information relating to complaints from Participants in accordance with the requirements of Schedule 8.8 (Management Information).

## B10. Not Used

## B11. Inspection of Sites

- B11.1 The Authority shall be entitled to inspect the Sites at any time during the Term and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of the Supplier's obligations under this Agreement.

## B12. Licence to occupy Sites

- B12.1 To the extent that any land or Sites are made available from time to time to the Supplier by the Authority in connection with this Agreement this shall, subject to the provisions of any additional agreement entered into by the Parties as may be required by the Authority, be made available to the Supplier on a non-exclusive licence basis, and shall be used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier shall have the use of such land or Sites as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.
- B12.2 Subject to Clause B12.1, the Supplier shall limit access to the land or Sites to such Supplier Personnel as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that its Supplier Personnel co-operate) with such other persons working concurrently on such land or Sites as the Authority may reasonably request.
- B12.3 Subject to Clause B12.1, the Supplier shall (and shall ensure that its Supplier Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Sites as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B12.4 Subject to Clause B12.1, the Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or its

Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

- B12.5 Subject to Clause B12.1, should the Supplier request modifications to the Authority Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Authority at the Supplier's expense. Ownership of such modifications shall rest with the Authority.

## B13. Property

- B13.1 Where the Authority provides Property free of charge to the Supplier such Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise in writing within five (5) Working Days of receipt.
- B13.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Agreement and for no other purpose without Approval.
- B13.4 The Supplier shall ensure all the Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- B13.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Supplier shall inform the Authority in writing within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## B14. Offers of employment

- B14.1 For the duration of the Agreement and for a period of twelve (12) months thereafter neither the Authority nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

## B15. Formal Warning Notice

- B15.1 Where the Authority considers that there has been Non Service Failure Default by the Supplier and that such Non Service Failure Default is capable of remedy by the Supplier, then the Authority may issue a Formal Warning Notice to the Supplier specifying the Non Service Failure Default and requiring that it be remedied by the Supplier at the Supplier's cost within ten (10) Working Days or such other period of time as the Authority may specify in the Formal Warning Notice. In the event that the Supplier fails to remedy the Non Service Failure Default in accordance with the Formal Warning Notice, this will entitle

the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

## B16. Monitoring of contract performance

- B16.1 The Authority (including any representative of the Authority) shall monitor the Supplier's performance in supplying the Services in accordance with the provisions of Schedule 2.2 or such other requirements as notified by the Authority to the Supplier from time to time.
- B16.2 The Parties shall have regular meetings to monitor and review:
- a) the performance of the Agreement;
  - b) the achievement of the Customer Service Standards;
  - c) the supply of the Services;
  - d) the performance by the Supplier of any of its other obligations under the Agreement; and
  - e) any other matter the Parties consider appropriate,
- and the Supplier shall comply with the provisions of Schedule 2.2 in this regard. The Authority may organise regular monitoring and spot checks of the Sites at any time to ensure the Supplier is complying with its obligations under the Agreement and the Supplier shall co-operate fully, at its own cost, with the Authority. The Authority shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the supply of the Services by the Supplier.
- B16.3 The Authority may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Supplier's performance in supplying the Services and the Supplier will co-operate with the assessor and take all necessary steps to implement recommendations made. Any Changes to any Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with the Change Control Procedure.
- B16.4 The Supplier shall ensure that the Authority (and its authorised representatives) have access to all relevant property, including the Sites, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in Clause B16 including putting in place arrangements to permit legal access to information as may be required.
- B16.5 With effect from the Effective Date, the Authority and the Supplier shall meet at the times and with such frequency as specified in Schedule 2.2 or as notified by the Authority to the Supplier from time to time. Such meetings shall be convened by the Authority upon the Authority giving written notice to the Supplier.
- B16.6 The Authority may monitor the Supplier's (and any Sub-contractor's) performance in supplying the Services to assess, amongst other things, compliance with Law, including without limitation in the fields of environmental, equality, social, labour and competition law. Where (in the opinion of the Authority), the Supplier (or any Affiliate or any of the Supplier Group) has or may have engaged in any agreement, arrangement, practice or



conduct which would amount to an infringement of Law, including without limitation in the fields of environmental, social, labour and competition law, without prejudice to any other rights or remedies that the Authority has under the Agreement the Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier.

## B17. Universal Credit

- B17.1 The Supplier acknowledges that the Authority has altered the benefit system such that Universal Credit replaces a number of existing benefits.
- B17.2 The Supplier is required to support the ongoing implementation of the Universal Credit insofar as it may impact on the Services, including (without limitation):
- (a) assisting in notifying Participants for which it is responsible how the change to Universal Credit will impact the Services as applicable to those Participants; and/or
  - (b) notification to the Authority of the data relevant to the impact of Universal Credit on the Services.
- B17.3 At any time, as a consequence of, or in connection with the implementation of Universal Credit, the Authority reserves the right to:
- (a) review all systems and processes used and implemented by the Supplier in connection with delivery of the Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Authority's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or
  - (b) require the Supplier to make such changes to the Supplier's systems and processes as the Authority may determine.

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## SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

### C1. Fees

- C1.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Fees to the Supplier in accordance with the provisions of this Clause C and Schedule 7.1 (Fees and Payment) (and for the avoidance of doubt where there is any conflict and/or ambiguity between the two the provisions of this Clause C shall prevail) via a self-billing process approved by HMRC.
- C1.2 The Parties acknowledge and agree that the Fees shall be the total amount payable by the Authority to the Supplier under or in relation to the Agreement.
- C1.3 If the Authority fails to pay any undisputed Fees properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at a rate of nought point nought one percent (0.01%), accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- C1.4 The Authority shall have no obligation to pay any Fees to the Supplier after the last day of the Payment Tail Period.

### C2. Delivery Fee

- C2.1 Subject to Clause H4.3 and Clause C6 and provided that the requirements of Schedule 7.1 (Fees and Payment) are met the Authority shall pay the Delivery Fee to the Supplier. The Authority shall make such payment in accordance with the provisions of Schedule 7.1 (Fees and Payment) and **Section 5** of the Specification.

### C3. Not used

### C4. Not used

### C5. Recovery of sums due

C5.1 Not Used.

C5.2 Not Used.

C5.3 Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C5.4 Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any default of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Authority.

C5.5 The Supplier shall make any payments due to the Authority without any deduction whether by way of any set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.



C5.6 All payments due shall be made within a reasonable time unless otherwise specified in the Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## C6. Not used

## C7. Third party revenue

- C7.1 The Supplier may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Agreement without the Approval of the Authority.
- C7.2 Neither the Supplier nor its agents or Sub-contractors, shall levy any charge, fee or any other sum on the Participants in connection with the Services without Approval which may be granted or refused at the Authority's sole discretion.

## C8. VAT

- C8.1 The Supplier shall add VAT to the Fees at the prevailing rate as applicable and the Authority shall pay the VAT to the Supplier following an eligible claim for VAT payment being notified by the Supplier.
- C8.2 The Supplier shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities (including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time) caused to the Authority whether directly or indirectly in whole or in part by reason of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement.
- C8.3 Without prejudice to Clause C8.2, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Supplier to:
- a) assess the VAT rate(s) and tax liability arising out of or in connection with the Agreement; and
  - b) account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Agreement to HMRC.
- C8.4 The Authority shall not be liable to the Supplier in any way whatsoever for any error or failure made by the Supplier (or the Authority) in relation to VAT, including without limit:
- a) where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Agreement;
  - b) where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;
  - c) where the Supplier's treatment of VAT in respect of any claim for payment made under the Agreement is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
  - d) where the Supplier does not provide accurate information to the Authority for it to calculate the VAT on an invoice produced by the self-billing process, the Authority

will not be liable to pay any VAT for that invoice either when it falls due, or at any later date. Further, in this scenario, the Supplier shall be obliged to repay any overpayment by the Authority on demand.

- C8.5 The Supplier acknowledges that the Authority has advised the Supplier that the Supplier should seek specialist VAT advice in relation to the Agreement and, in the event of any uncertainty following specialist advice, the Supplier should seek clarification of the Agreement's VAT status with HMRC.
- C8.6 Without prejudice to Clause C8.2 and C8.3, the Supplier shall comply with the Law governing self-billing contracts including, without limitation, as more particularly described in HMRC Notice 700/62 it shall:
- a) prior to the Referral Period Start Date, confirm the rate(s) of VAT that the Authority should apply to each part of the funding model used in the Agreement on the Effective Date and on each anniversary thereof;
  - b) enter into an annual self-billing agreement with the Authority on or around the Effective Date and on each anniversary thereof, for the duration of the Agreement (a template of the current version of which is set out in Appendix 2 to Schedule 7.1 (Fees and Payment)); and
  - c) complete the VAT confirmation documentation as required by the Authority (a template of the current version of which is set out in Appendix 1 to Schedule 7.1 (Fees and Payment)).

## C9. Methods of Payment

- C9.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give thirty (30) days' notice to the Supplier of any change to the method of payment. All payments of Fees are conditional upon the Supplier providing the Services in accordance with the terms of the Agreement.

### Set-off and withholding

- C9.2 Not used.
- C9.3 Further to Clause C5, the Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

- C9.4 Not Used.

### Benchmarking

- C9.5 The Parties shall comply with the provisions of Schedule 7.3 (Benchmarking) in relation to the benchmarking of any or all of the Services.

### Financial Distress

- C9.6 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

## C10. Promoting Tax Compliance

- C10.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - (b) promptly provide to the Authority:
    - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

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## SECTION D - CONTRACT GOVERNANCE

### D1. Governance

- D1.1 The Parties shall comply with the provisions of Schedule 8.1 (Governance) in relation to the management and governance of this Agreement.

#### Representatives

- D1.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- D1.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause E1 (Supplier Personnel).
- D1.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### D2. Records, Reports, Audits and Open Book Data

- D2.1 The Supplier shall comply with the provisions of:
- (a) Schedule 8.4 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and
  - (b) Part A of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the maintenance of Open Book Data.
- D2.2 The Parties shall comply with the provisions of:
- (a) **Not Used;**
  - (b) Part C of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

### D3. Change

#### Change Control Procedure

- D3.1 Any requirement for a Change shall be subject to the Change Control Procedure.

#### Change in Law

- D3.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Fees as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

- D3.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause D3.2), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
    - (i) whether any Change is required to the Services, the Fees or this Agreement; and
    - (ii) whether any relief from compliance with the Supplier's obligations is required; and
  - (b) provide the Authority with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause B6 (Services Improvement), has been taken into account in amending the Fees.

Any variation in the Fees or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause D3.2(b)) shall be implemented in accordance with the Change Control Procedure.

### Changes to the Agreement

- D3.4 No Change, amendment, variation, restatement or supplement to this Agreement shall be effective unless it is made in writing in accordance with the Change Control Procedure and signed on behalf of the Parties.
- D3.5 Save as provided in Clause D3.6 and D3.7 below, the Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Agreement which has the effect of:
- (a) rendering this Agreement materially different in character from this Agreement as at the Effective Date;
  - (b) changing the economic balance of this Agreement in favour of the Supplier in a manner which is not provided for in this Agreement as at the Effective Date; or
  - (c) extending the scope of this Agreement considerably

unless such Contract Change or Operational Change is otherwise permitted under regulation 72 of the Public Contracts Regulations 2015.

- (a) The Parties may agree to make a Contract Change or Operational Change to this Agreement where such Change is provided for in the Agreement and/or in the ITT including (but not limited to): increasing the contract value by an amount equal to any ESF funding, or funding from domestic or other sources following the UK's exit from the European Union, which is available to the Authority to purchase the Services
- (b) any modification to the Referral Period Start Date and any consequential modifications to this Agreement required to ensure that the economic balance of this

Agreement is not changed in favour of the Supplier;

- (c) adding or revising any Cohort Profile as a consequence of, or in connection with, changes in volumes of Participant Starts or the addition or removal of any groups of Participants;
- (d) Not Used;
- (e) Not Used;
- (f) any modification required as a consequence of, or in connection with, changes from time to time to the Authority's administrative or operational structures or procedures;
- (g) any modification required as a consequence of, or in connection with, changes from time to time to any of the Authority's:
  - (i) DWP Information Security Policy;
  - (ii) DWP Physical Security Policy; or
  - (iii) DWP Acceptable Use Policy
- (h) any modification required as a consequence of, or in connection with, any Transfer of Functions Order;
- (i) any modification which is a consequence of, or arising in connection with, any recommendation made by an assessor appointed pursuant to Clause B16.3;
- (j) Not Used;
- (k) any modification required as a consequence of, or in connection with, the implementation of Universal Credit;
- (l) any waiver (whether permanent or temporary or conditional or unconditional) by a Party of any of its rights under this Agreement;
- (m) any temporary modification made pursuant to a Performance Improvement Plan;
- (n) any settlement and/or compromise agreement entered into in respect of this Agreement;
- (o) any modification required as a consequence of, or in connection with, changes in applicable Law; and
- (p) any consequential modifications to this Agreement required to give effect to any Contract Change or Operational Change made pursuant to this Clause D3.6.

**D3.6** The Authority may unilaterally extend the Referral Period by one (1) or more extensions up to a maximum of twelve (12) months in total. Where the Authority chooses to extend the Referral Period pursuant to this Clause D3.7, the Authority will give written notice to the Supplier of not less than six (6) months (or on such shorter notice period as may be agreed by the Parties) prior to the Referral Period End Date. In accordance with any extension of the Referral Period pursuant to this Clause D3.7, the Authority may unilaterally amend the Services Cessation Date and extend the Services Delivery Period and the Term. The provisions of this Agreement shall continue to apply throughout any extended Term subject to:

- (a) any Contract Change, Operational Change or adjustment to the Fees made

pursuant to this Clause D3;

- (b) the right of the Authority in its absolute discretion to amend the funding and payment model for such extended Term,

D3.7 If the Authority serves written notice to the Supplier to extend the Referral Period pursuant to Clause D3.7 above, the Supplier undertakes to do all acts and execute all documents which may be necessary to give effect to such extension.

D3.8 If the Parties agree to make a Contract Change or Operational Change, the Supplier undertakes to procure the consent of the Guarantor to such Contract Change or Operational Change.

D3.9 Not Used.

D3.10 Not used

D3.11 Subject to Clause D3.12, the Authority may modify the format of Appendix 1 to Schedule 13 (Life Chances) unilaterally at any time during the Agreement and such modification shall become effective on and from the date notified to the Supplier.

D3.12 If the Supplier reasonably believes that a modification made pursuant to Clause D3.11 will have an economic effect on the Supplier and therefore wishes such modification to be made via the Change Control Procedure, the Supplier shall so notify the Authority within ten (10) days of receiving notification under Clause D3.11. Such notification shall include:

- (a) why the Supplier reasonably believes that there will be an economic impact; and
- (b) the quantum of such economic impact accompanied by supporting calculations and assumptions.

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## SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

### E1. Supplier Personnel

#### E1.1 The Supplier shall:

- (a) Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (Services Description) and Schedule 2.4 (Security Requirements); and
  - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Requirements);
- (c) subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

#### E1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

### Key Personnel

#### E1.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons



who the Supplier shall appoint to fill those Key Roles at the Effective Date.

- E1.4 The Authority 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 Personnel.
- E1.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- E1.6 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (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);
  - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
  - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - (e) ensure that any replacement for a Key Role:
    - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

## Employment indemnity

- E1.7 The Parties agree that:
- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
  - (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the

Authority or any of the Authority's employees, agents, consultants and contractors.

## Income Tax and National Insurance Contributions

- E1.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

## Staff transfer

- E1.9 The Parties agree that:
- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (Staff Transfer) shall apply as follows:
    - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (Staff Transfer) shall apply;
    - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (Staff Transfer) shall apply;
    - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (Staff Transfer) shall apply; and
    - (iv) Part C of Schedule 9.1 (Staff Transfer) shall not apply;
  - (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (Staff Transfer) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and
  - (c) Part E of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

## E2. Supply chain rights and protections

### Advertising Sub-contract opportunities

- E2.1 The Supplier shall:
- (a) subject to Clause E2.3 and E2.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of twenty-five thousand pounds

(£25,000) that arise during the Term;

- (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause E2.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

E2.2 Each advert referred to in Clause E2.1 above 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.

E2.3 The obligation at Clause E2.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

E2.4 Notwithstanding Clause E2.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

### Appointment of Sub-contractors

E2.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

E2.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

E2.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause E2.6, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

E2.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause E2.6 (or, if later, receipt of any further information requested pursuant

to Clause E2.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause E2.22;

in which case, the Supplier shall not proceed with the proposed appointment.

E2.9 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause E2.6; and
  - (ii) any further information requested by the Authority pursuant to Clause E2.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause E2.10 (Appointment of Key Sub-contractors)),

the Supplier may proceed with the proposed appointment.

### Appointment of Key Sub-contractors

E2.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause E2.22.

E2.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

E2.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;

- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) 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 Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
  - (i) data protection requirements set out in Clauses F5 (Authority Data and Security Requirements) and F8 (Protection of Personal Data);
  - (ii) FOIA requirements set out in Clause F7 (Transparency and Freedom of Information);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause B2.5(m) (Services);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
  - (v) the conduct of Audits set out in Part C of Schedule 7.5 (Financial Reports and Audit Rights);
- (f) 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 Authority under Clauses I1.1(a) (Termination by the Authority) and I2.4 (Payments by the Authority) and Schedule 7.2 (Payments on Termination) of this Agreement;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause H3 (Remedial Adviser);
- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause H4 (Step-in Rights);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
  - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

- (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

- (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (Financial Distress).

E2.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

### Supply chain protection

E2.14 The Supplier shall ensure that all Sub-contracts (which in this sub-Clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a Clause to the same effect as this Clause E2.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

E2.15 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) produce a summary of its compliance with Clause E2.15(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

E2.16 Notwithstanding any provision of Clauses F6 (Confidentiality) and F9 (Publicity and

Branding), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

## Termination of Sub-contracts

E2.17 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
  - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause I1.1(b) (Termination by the Authority);
  - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
  - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
  - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause E2.18; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

## Competitive Terms

E2.18 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause E2.13, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

E2.19 If the Authority exercises either of its options pursuant to Clause E2.14, then the Fees shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

E2.20 The Authority's right to enter into a direct agreement for the supply of the relevant items is



subject to:

- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Fees taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

### Retention of legal obligations

- E2.21 Notwithstanding the Supplier's right to sub-contract pursuant to this E2, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

### Exclusion of Sub-contractors

- E2.22 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
  - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

### Reporting SME/VCSE Sub-contracts

- E2.23 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records Provisions) Annex 4 and in accordance with any guidance issued by the Authority from time to time.
- E2.24 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.



## SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

### F1. Intellectual Property Rights

F1.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
  - (i) the Supplier Software;
  - (ii) the Third Party Software;
  - (iii) the Third Party IPRs; and
  - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
  - (i) the Authority Software;
  - (ii) the Authority Data; and
  - (iii) the Authority Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

F1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause F1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

F1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

F1.4 Unless the Authority otherwise agrees in advance in writing:

- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
- (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.

F1.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause F4A (Open Source Publication).

## F2. Transfer and Licences Granted by the Supplier

### Specially Written Software and Project Specific IPRs

F2.1 Subject to Clause F2.17 (Patents) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause F1.1(a)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) 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 (together the **“Software Supporting Materials”**);

but not including any Know-How, trade secrets or Confidential Information.

F2.2 The Supplier:

- (a) shall:
  - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
  - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the Authority’s request and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
  - (iii) without prejudice to Clause F2.11 (Third Party Software and Third Party IPRs), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause F2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

### Supplier Software and Supplier Background IPRs

F2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is sent to the Technical Board for review and approval granted by the Authority.

F2.4 The Supplier hereby grants to the Authority:

- (a) subject to the provisions of Clause F2.17 (*Patents*), perpetual, royalty-free and non-

exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
  - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses F2.7 and F2.8(b) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

F2.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause F2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause F2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause F2.7 (Authority's right to sub-license) commits any material breach of the terms of Clause F2.4(a)(i) or F2.4(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

F2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause F2.5, the Authority shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

## Authority's right to sub-license

- F2.7 Subject to Clause F2.17 (Patents) the Authority may sub-license:
- (a) the rights granted under Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
    - (i) the sub-licence is on terms no broader than those granted to the Authority;
    - (ii) the sub-licence authorises the third party to use the rights licensed in Clause F2.4(a) (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
    - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier; and
  - (b) the rights granted under Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
    - (i) the sub-licence is on terms no broader than those granted to the Authority; and
    - (ii) the Supplier has received a confidentiality undertaking in its favour duly executed by the Approved Sub-Licensee.

## Authority's right to assign/novate licences

- F2.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to:
- (a) A Central Government Body
  - (b) 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 Authority.
- F2.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs).
- F2.10 If a licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs) is novated under Clause F2.8 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Clause F2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority

## Third Party Software and Third Party IPRs

- F2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party

Non-COTS Software or Third Party Non-COTS IPRs or approval is granted by the Authority following a review by the Technical Board and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses F2.4(a) and F2.5 (Supplier Software and Supplier Background IPRs) and Clause F2.8 (Authority's right to assign/novate licences); or
- (b) complied with the provisions of Clause F2.12.

F2.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause F2.11(a), the Supplier shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

F2.13 The Supplier shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause F2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

F2.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

## Termination and replacement Suppliers

F2.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause F2.

F2.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (Exit Management) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:
  - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of

the relevant Software and/or IPRs pursuant to or as contemplated by this Clause F2 subject to receipt by the Supplier of a confidentiality undertaking in its favour duly executed by the Replacement Supplier;

- (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

## Patents

- F2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

## F3. Licences granted by the Authority

- F3.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause F6 (Confidentiality); and
  - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- F3.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause F3.1 and any sub-licence granted by the Supplier in accordance with Clause F3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
  - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer,



word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

## F4. IPRs indemnity

- F4.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- F4.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
    - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
    - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- F4.3 If the Supplier elects to procure a licence in accordance with Clause F4.2(a) or to modify or replace an item pursuant to Clause F4.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
  - (b) without prejudice to the indemnity set out in Clause F4.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## F4a Open Source publication

- F4A.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Effective Date.
- F4A.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
  - (b) shall not cause any harm or damage to any party using anything published as Open

Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;

- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
- (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Effective Date.

F4A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

F4A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-Clause F4A.1.

## F5. Authority Data and security requirements

F5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

F5.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

F5.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Services Description).

F5.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

F5.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

F5.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.

F5.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:



- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).

- F5.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- F5.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Requirements).
- F5.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- F5.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services, it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Fees shall then be agreed in accordance with the Change Control Procedure.
- F5.12 Until and/or unless a change to the Fees is agreed by the Authority pursuant to Clause F5.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- F5.13 The Supplier and any of its Sub-contractors, shall not access, process, host or transfer Authority Data outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Supplier shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question. The provisions set out in this paragraph F5.13 shall apply to Landed Resources.
- F5.14 Where the Authority has given its prior written consent to the Supplier to access, process, host or transfer Authority Data from premises outside the United Kingdom (in accordance with clause F5.13 of the Agreement):
- (a) the Supplier must notify the Authority (in so far as they are not prohibited by Law) where any regulatory bodies seek to gain or has gained access to such Authority Data; and
  - (b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any regulatory bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

## F6. Confidentiality

- F6.1 For the purposes of this Clause F6, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

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- F6.2 Except to the extent set out in this Clause F6 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
  - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- F6.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause F7 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
    - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
    - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
  - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- F6.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- F6.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
  - (b) its auditors; and
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- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this F6.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

F6.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause F6.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause H4 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause H3 (Remedial Adviser) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause F6.

F6.7 Nothing in this Clause F6 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## F7. Transparency and Freedom of Information

F7.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

F7.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its

consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- F7.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records Provisions).
- F7.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- F7.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- F7.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause F6.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- F7.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) 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 EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- F7.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting

or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## F8. Protection of Personal Data

### Status of the Controller

- F8.1 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 this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) "Controller" (where the other Party acts as the "Processor");
  - (b) "Processor" (where the other Party acts as the "Controller");
  - (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
  - (d) "Independent Controller" of the Personal Data where either:
    - (i) the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control); or
    - (ii) the Party is "Controller" of the Personal Data, and the other Party does not process the Personal Data;

and the Parties shall set out in Schedule 11 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Agreement.

### Where one Party is Controller and the other Party its Processor

- F8.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (Processing Personal Data) by the Controller.
- F8.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- F8.4 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:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security

measures and mechanisms to ensure the protection of Personal Data.

F8.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 11 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause F5 (Authority Data and Security Requirements), 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:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (Processing Personal Data));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Clause, Clauses F6 (Confidentiality) and F5 (Authority Data and Security Requirements);
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) 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:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) 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
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

F8.6 Subject to Clause F8.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) 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
- (f) becomes aware of a Data Loss Event.

F8.7 The Processor's obligation to notify under Clause F8.6 shall include the provision of further information to the Controller in phases, as details become available.

F8.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause F8.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event; and/or
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

F8.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the

Processor employs fewer than two-hundred and fifty (250) staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

F8.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

F8.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

F8.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause F8 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

F8.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

F8.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 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 this Agreement).

F8.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. 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's Office.

### Where the Parties are Joint Controllers of Personal Data

F8.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 1 to Schedule 11 (Processing Personal Data).

### Where the Parties are Independent Controllers of the same Personal Data

F8.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.



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- F8.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- F8.19 Where a Party has provided Personal Data to the other Party in accordance with Clause F8.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- F8.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- F8.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Agreement;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  - (c) where it has recorded it in Schedule 11 (*Processing Personal Data*).
- F8.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- F8.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- F8.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (**“the Request Recipient”**):
- (a) 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
  - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    - (i) 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
    - (ii) 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.
- F8.25 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 this Agreement and shall:
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- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) 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.

F8.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (Processing Personal Data).

F8.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (Processing Personal Data).

F8.28 Notwithstanding the general application of Clauses F8.2 to F8.15 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 Clause F8.16 to F8.27.

### Other obligations when a Party acts as a Controller, Processor, Joint Controller, or Independent Controller

F8.29 Each Party shall in relation to the processing of Personal Data comply with its obligations under the Data Protection Legislation. Each Party shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of the Data Protection Legislation. This Clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

F8.30 Without limiting the generality of the obligations set out in Clause F8.29, each Party shall ensure that it is not subject to any prohibition or restriction which would:

- (a) prevent or restrict it from disclosing or transferring Personal Data to the other Party, as required under this Agreement;
- (b) prevent or restrict it from granting the other Party access to the Personal Data, as required under this Agreement; or
- (c) prevent or restrict either Party from processing the Personal Data, as envisaged under this Agreement.

F8.31 Each Party shall ensure that:

- (a) all fair processing notices have been given (and/or as applicable, explicit consents obtained) and are sufficient in scope to enable each Party to process the Personal Data as required in order to obtain the benefits of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Legislation, which shall include notification to Data Subjects that their Personal Data may be shared by the Authority with the Supplier and by the Supplier with the Authority and with any other third party organisations envisaged within the Agreement;

- (b) appropriate Protective Measures are in place to ensure and be able to demonstrate that processing is performed in accordance with the GDPR.

F8.32 The Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier or Supplier Personnel of this Clause F8.

## F9. Publicity and Branding

F9.1 The Supplier shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

F9.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## F10. Provision of Management Information

F10.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Clause F10 and Schedule 8.8 (Management Information).

## SECTION G - LIABILITY, INSURANCE, INDEMNITIES, AND LIQUIDATED DAMAGES

### G1. Limitations on liability

#### Unlimited liability

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 The Supplier's liability in respect of the indemnities iClause F4 (IPRs Indemnity) and F8.32 (Protection of Personal Data) shall be unlimited.

G1.3 Not used.

#### Financial and other limits

G1.4 Subject to Clauses G1.1 and G1.2 (Unlimited Liability) and Clauses G1.7 and G1.8 (Consequential losses):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed **REDACTED**;
- (b) Not Used;
- (c) Not Used;
- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to one-hundred and fifty percent (150%) of the Estimated Year 1 Fees;
  - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one-hundred and fifty percent (150%) of the Fees paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
  - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to one-hundred and fifty percent (150%) of the Fees paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in this Clause G1.4(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to one-hundred and fifty percent (150%) shall be deemed to be references to two-hundred percent (200%).

(e) Not Used

G1.5 Not Used.

G1.6 Subject to Clause G1.1 (Unlimited Liability) and Clause G1.7 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Fees as and when they fall due for payment:

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause I1.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause I1.3(a) (Termination by the Supplier) shall in no event exceed the following amounts:
  - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (Payments on Termination);
  - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (Payments on Termination); and
  - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (Payments on Termination); and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
  - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Fees;
  - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Fees paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
  - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Fees paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

### Consequential losses

G1.7 Subject to Clauses F8.32 (Protection of Personal Data), G1.1 and G1.2 (Unlimited Liability), Clause G1.8 and Clause G3.2, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

G1.8 Notwithstanding Clause G1.7, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to

the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or Fees;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- (f) Not Used.

### Conduct of indemnity claims

- G1.9 Where under this Agreement one (1) Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

### Mitigation

- G1.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

### Participants

- G1.11 Responsibility for the control, management, and supervision of all Participants shall rest entirely with the Supplier subject to the Participant complying with all reasonable instructions and directions which the Supplier may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant.

## G2. Insurance

The Supplier shall comply with the provisions of Schedule 2.5 (Insurance Requirements) in relation to obtaining and maintaining insurance.

## G3. Not Used

## G4. Liquidated damages

- G4.1 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) if a Default occurs under any of:
  - (i) Clause C10 (Promoting Tax Compliance);
  - (ii) Clause F8 (Protection of Personal Data);
  - (iii) Clause J1 (Compliance);
  - (iv) Clause J5 (Prevention of Fraud and Bribery);
  - (v) Schedule 7.5 (Financial Reports and Audit Rights);
  - (vi) Schedule 8 (Welsh Language Scheme)
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
- (c) such Default is not remedied within five (5) Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within twenty-five (25) Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Supplier shall pay the Authority, as liquidated damages, an amount equal to one Delivery Fee Periodic Payment for each month or each part month during which such Default has not been remedied by the Supplier provided that if such Default is remedied by the Supplier the Authority shall pay to the Supplier an amount equal to the liquidated damages actually paid to it by the Supplier in respect of such Default pursuant to this Clause G4.1.

G4.2 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) If a Default occurs under any of:
  - (i) Clause B3 (Implementation);
  - (ii) Clause F7.6 (Transparency and Freedom of Information);
  - (iii) Clause F7.7(b) (Transparency and Freedom of Information);
  - (iv) Clause F7.7(c) (Transparency and Freedom of Information);
  - (v) Schedule 2.1 (Services Description);
  - (vi) Schedule 2.4 (Security Requirements);
  - (vii) Part A of Annex 1 to Schedule 2.5 (Insurance Requirements);
  - (viii) Schedule 4.1 (Supplier Solution);
  - (ix) Schedule 6 (Implementation);
  - (x) paragraph 2.1 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
  - (xi) paragraph 2.4(b) of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);

- (xii) paragraph 7.1 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
  - (xiii) paragraph 7.4(b) of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
  - (xiv) paragraph 8.5 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
  - (xv) paragraph 2.1 of Schedule 12 (Sustainable Development Requirements);
  - (xvi) paragraph 23 of Schedule 15 (European Social Fund (ESF) Requirements);
  - (xvii) paragraph 24 of Schedule 15 (European Social Fund (ESF) Requirements); and
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
- (c) such Default is not remedied within 5 Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within 25 Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Supplier shall pay the Authority, as liquidated damages, an amount equal to five percent (5%) of the Delivery Fee Periodic Payment for each Working Day's delay (exclusive of VAT) in remedying the Default.

G4.3 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) if a Default occurs under any of:
- (i) paragraph 2.3 of Schedule 8.5 (Exit Management);
  - (ii) paragraph 4.1 of Schedule 8.5 (Exit Management);
  - (iii) paragraph 4.5 of Schedule 8.5 (Exit Management); and
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
- (c) such Default is not remedied within five (5) Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within twenty-five (25) Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Supplier shall pay the Authority, as liquidated damages, an amount equal to ten percent (10%) of the Delivery Fee Periodic Payment for each Working Day's Delay (exclusive of VAT) in remedying the Default.

G4.4 The Supplier shall pay liquidated damages under Clauses G4.1, G4.2 and G4.3 on demand or the Authority may deduct them from its payments to the Supplier.

G4.5 The Parties confirm that these liquidated damages are reasonable and proportionate to protect the Authority's legitimate interest in the performance of this Agreement by the Supplier.





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## SECTION H – REMEDIES AND RELIEF

### H1. Not Used

### H1. Not Used

### H3. Remedial Adviser

#### H3.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an **“Intervention Cause”**), the Authority may give notice to the Supplier (an **“Intervention Notice”**) giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause H3.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause H3.1 prior to or instead of exercising its right to terminate this Agreement.

#### H3.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
  - (i) a person selected by the Supplier and approved by the Authority; or
  - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (c) any right of the Authority to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the **“Intervention Period”**).

#### H3.3 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

H3.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

H3.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause H3.

H3.6 If:

- (a) the Supplier:
  - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
  - (ii) is in Default of any of its obligations under Clause H3.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority).

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## H4. Step-In Rights

- H4.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a **“Step-In Notice”**) that it will be taking action under this Clause H4 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause F6 (Confidentiality)). The Step-In Notice shall set out the following:
- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
  - (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
  - (c) the date on which it wishes to commence the Required Action;
  - (d) the time period which it believes will be necessary for the Required Action;
  - (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
  - (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- H4.2 Following service of a Step-In Notice, the Authority shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
  - (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
  - (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this H4.
- H4.3 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - (b) no Deductions shall be applicable in relation to Fees in respect of Services that are the subject of the Required Action and the provisions of Clause H4.4 shall apply to Deductions from Fees in respect of other Services; and
  - (c) the Authority shall pay to the Supplier the Fees after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- H4.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or

(b) the non-achievement of any RNO or Customer Service Standard,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Fees.

H4.5 Before ceasing to exercise its step in rights under this Clause H4 the Authority shall deliver a written notice to the Supplier (a **“Step-Out Notice”**), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the **“Step-Out Date”**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause H4.6.

H4.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **“Step-Out Plan”**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

H4.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

H4.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause H4, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

(a) Limbs (c) or (d) of the definition of a Step-In Trigger Event; or

(b) Limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

## H5. Authority Cause

H5.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

(a) provide the Services in accordance with the Customer Service Standards and/or

(b) comply with its obligations under this Agreement,

(each a **“Supplier Non-Performance”**),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause H5):

(i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

- (A) to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority); or
- (B) to take action pursuant Clauses H3 (Remedial Adviser) or H4 (Step-In);

(iii) Not Used;

(iv) Not Used.

H5.2 In order to claim any of the rights and/or relief referred to in Clause H5.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Supplier.

H5.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

H5.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

H5.5 Without prejudice to Clause B2.9 (Continuing obligation to provide the Services), if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

H5.6 Any Change that is required to the Implementation Plan or to the Fees pursuant to this Clause H5 shall be implemented in accordance with the Change Control Procedure.

## H6. Force Majeure

H6.1 Subject to the remaining provisions of this Clause H6 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause H6 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force

Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- H6.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- H6.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H6 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the Service Continuity Services, but the Supplier has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- H6.4 Subject to Clause H6.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- H6.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- H6.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
    - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause I1.1(c) (Termination by the Authority) or Clause I1.3(b) (Termination by the Supplier); and
    - (ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
    - (i) the Authority shall not be entitled:
      - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause H3 (Remedial Adviser) and/or Clause H4 (Step-in Rights) as a result of such failure;
      - (B) Not Used;
      - (C) Not Used; and
    - (ii) the Supplier shall be entitled to receive payment of the Fees (or a proportional payment of them) only to the extent that the Services (or part of

the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

- H6.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- H6.8 Relief from liability for the Affected Party under this Clause H6 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause H6.7.



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## SECTION I – TERMINATION AND EXIT MANAGEMENT

### 11. Termination Rights

#### Termination by the Authority

11.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time with 3 month's notice, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

11.2 Where the Authority:

- (a) is terminating this Agreement under Clause 11.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 11.1(b) or Clause 11.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### Termination by the Supplier

11.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds two percent (2%) of the Anticipated Contract Value and such amount remains outstanding sixty (60) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause C5 or C9.3; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 11.3(b) would result in a Partial Termination, the provisions of Clause 11.4 (Partial

Termination) shall apply.

## Partial Termination

- 11.4 If the Supplier notifies the Authority pursuant to Clause I1.3(b) (Termination by the Supplier) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause I1.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 11.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Fees, provided that:
- (a) the Supplier shall not be entitled to an increase in the Fees in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
  - (b) any adjustment to the Fees (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
  - (c) the Supplier shall not be entitled to reject the Change.

## 12. Consequences of Expiry or Termination

### General provisions on Expiry or Termination

- 12.1 The provisions of Clauses B2.8 (Specially Written Software warranty), C5 (Recovery of Sums Due), C8 (VAT), C9.3 (Set-off and Withholding), D2 (Records, Reports, Audits and Open Book Data), E1.7 (Employment Indemnity), E1.8 (Income Tax and National Insurance Contributions), F1 (Intellectual Property Rights), F2 (Transfer and Licences Granted by the Supplier), F4.1 (IPRs Indemnity), F6 (Confidentiality), F7 (Transparency and Freedom of Information), F8 (Protection of Personal Data), G1 (Limitations on Liability), I2 (Consequences of Expiry or Termination), J6 (Severance), J8 (Entire Agreement), J9 (Third Party Rights), J11 (Disputes) and J12 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Fees and Payments), 7.2 (Payments on Termination), 7.5 (Financial Transparency and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement.

### Exit Management

- 12.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

### Payments by the Authority

- 12.3 If this Agreement is terminated by the Authority pursuant to Clause I1.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause I1.3(a) (Termination by the Supplier),

the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three-hundred and sixty-five (365) days:
  - (i) the period from (but excluding) the date that the Termination Notice is given (or deemed given pursuant to Clause J10) by the Authority pursuant to Clause I1.1(a) (Termination by the Authority)) to (and including) the Termination Date; or
  - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause I1.3(a) (Termination by the Supplier) to (and including) the Termination Date.

12.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses I1.1(b), I1.1(c) and/or I1.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management); and
- (b) payments in respect of unpaid Fees for Services received up until the Termination Date.

12.5 The costs of termination incurred by the Parties shall lie where they fall if:

- (a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses I1.1(c) or I1.2(b) (Termination by the Authority) or I1.3(b) (Termination by the Supplier); or
- (b) the Authority terminates this Agreement under Clause I1.1(d).

12.6 .

12.7 Not used. [Payments by the Supplier](#)

12.8 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Fees it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

12.9 Where the Authority terminates the Agreement under Clause I1.1(b) (Termination by the Authority) and then makes other arrangements for the supply of Services ("**Other Arrangements**"), the Authority may recover from the Supplier the cost of making such Other Arrangements and any expenditure incurred (including but not limited to legal costs) by the Authority in connection with such Other Arrangements in accordance with Schedule 7.2 (Payments on Termination). The Authority shall take all reasonable steps to mitigate such cost and expenditure.

12.10 Where an Agreement is terminated under Clause I1.1(b), the Authority shall be entitled to withhold payment of any amount otherwise due to the Supplier under this Agreement until such time as the Authority has been able to establish the cost of making such Other Arrangements. For the avoidance of doubt, no interest shall accrue on any payments that are withheld under this Clause 12.10.



## SECTION J - MISCELLANEOUS AND GOVERNING LAW

### J1. Compliance

#### Health and Safety

- J1.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Authority Premises.
- J1.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### Equality and Diversity

- J1.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
    - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
  - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### Official Secrets Act and Finance Act

- J1.4 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

#### Sustainable Development

- J1.5 In delivering the Services, the Supplier shall comply at all times with the requirements set out in Schedule 12 (Sustainable Development Requirements) or such other requirements as notified by the Authority to the Supplier from time to time.

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## J2. Assignment and Novation

- J2.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- J2.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,
- and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause J2.2.
- J2.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause J2.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- J2.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

## J3. Waiver and cumulative remedies

- J3.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- J3.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## J4. Relationship of the Parties

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

## J5. Prevention of fraud and bribery

- J5.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier 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.

J5.2 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's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

J5.3 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 J5.3(a) and make such records available to the Authority 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.

J5.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause J5.1 and/or J5.2, or has reason to believe that it has or any of the Supplier 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.

J5.5 If the Supplier makes a notification to the Authority pursuant to Clause J5.4, 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 accordance with Clause D2 (Records, Reports, Audits and Open Book Data).

J5.6 If the Supplier is in Default under Clauses J5.1 and/or J5.2, the Authority may by notice:

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

J5.7 Any notice served by the Authority under Clause J5.6 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).

## J6. Severance

J6.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

J6.2 In the event that any deemed deletion under Clause J6.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

J6.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause J6.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause J6.3.

## J7. Further assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

## J8. Entire agreement

J8.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

J8.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

J8.3 Nothing in this Clause J8 shall exclude any liability in respect of misrepresentations made fraudulently.



## J9. Third party rights

- J9.1 The provisions of Clause F4.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- J9.2 Subject to Clause J9.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- J9.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- J9.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause J9.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## J10. Notices

- J10.1 Any notices sent under this Agreement must be in writing.
- J10.2 Subject to Clause J10.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

- J10.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
<b>Contact</b>	REDACTED	REDACTED
<b>Address</b>	REDACTED	REDACTED
<b>Email</b>	REDACTED	REDACTED

- J10.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause J10.2:
- (a) Step-In Notices;
  - (b) Force Majeure Notices;
  - (c) notices issued by the Supplier pursuant to Clause I1.3 (Termination by the Supplier);
  - (d) Termination Notices; and
  - (e) Dispute Notices.
- J10.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause J10.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For<sup>TM</sup> 1st Class delivery (as set out in the table in Clause J10.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- J10.6 This Clause J10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

## J11. Disputes

- J11.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- J11.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

## J12. Governing law and jurisdiction

- J12.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- J12.2 Subject to Clause J11 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement comes into force in accordance with Clause B1 (Term).

**SIGNED for and on behalf of**  
The Secretary of State for Work and  
Pensions (the Authority) acting as part of  
the Crown

**SIGNED for and on behalf of**  
**Serco Ltd**

**Name:** REDACTED

**Name (Director):** [Insert] REDACTED

**Position:** REDACTED

**Signature:** REDACTED

**Signature:** REDACTED